

Y4.P84/10:T53

95-2

95th Congress }  
2d Session }

COMMITTEE PRINT

{ PRINT No.  
95-22

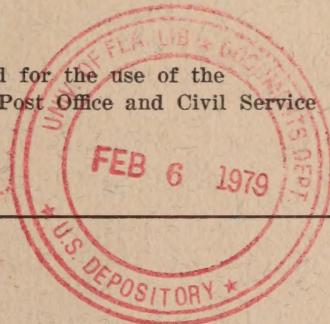
**TITLE 5, UNITED STATES CODE**  
**Government Organization**  
**and Employees**

PREPARED BY THE  
COMMITTEE ON  
POST OFFICE AND CIVIL SERVICE  
HOUSE OF REPRESENTATIVES



DECEMBER 1978

Printed for the use of the  
Committee on Post Office and Civil Service





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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1978

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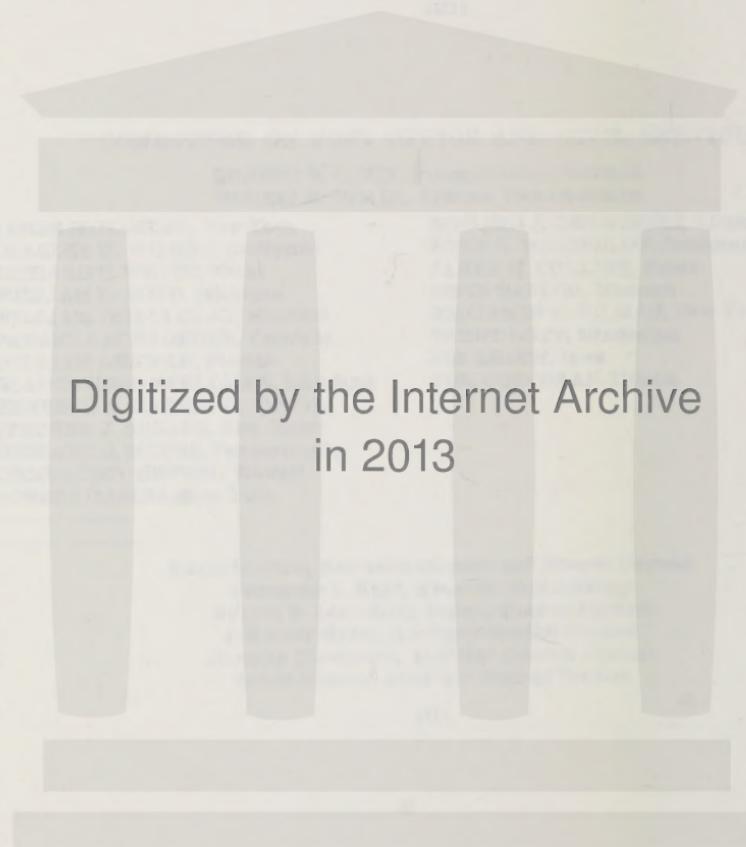
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## **NOTE**

This Committee Print No. 95-22 of title 5, United States Code, relating to government organization and employees, includes amendments made to that title through November 10, 1978. It replaces all previous committee prints.

(III)

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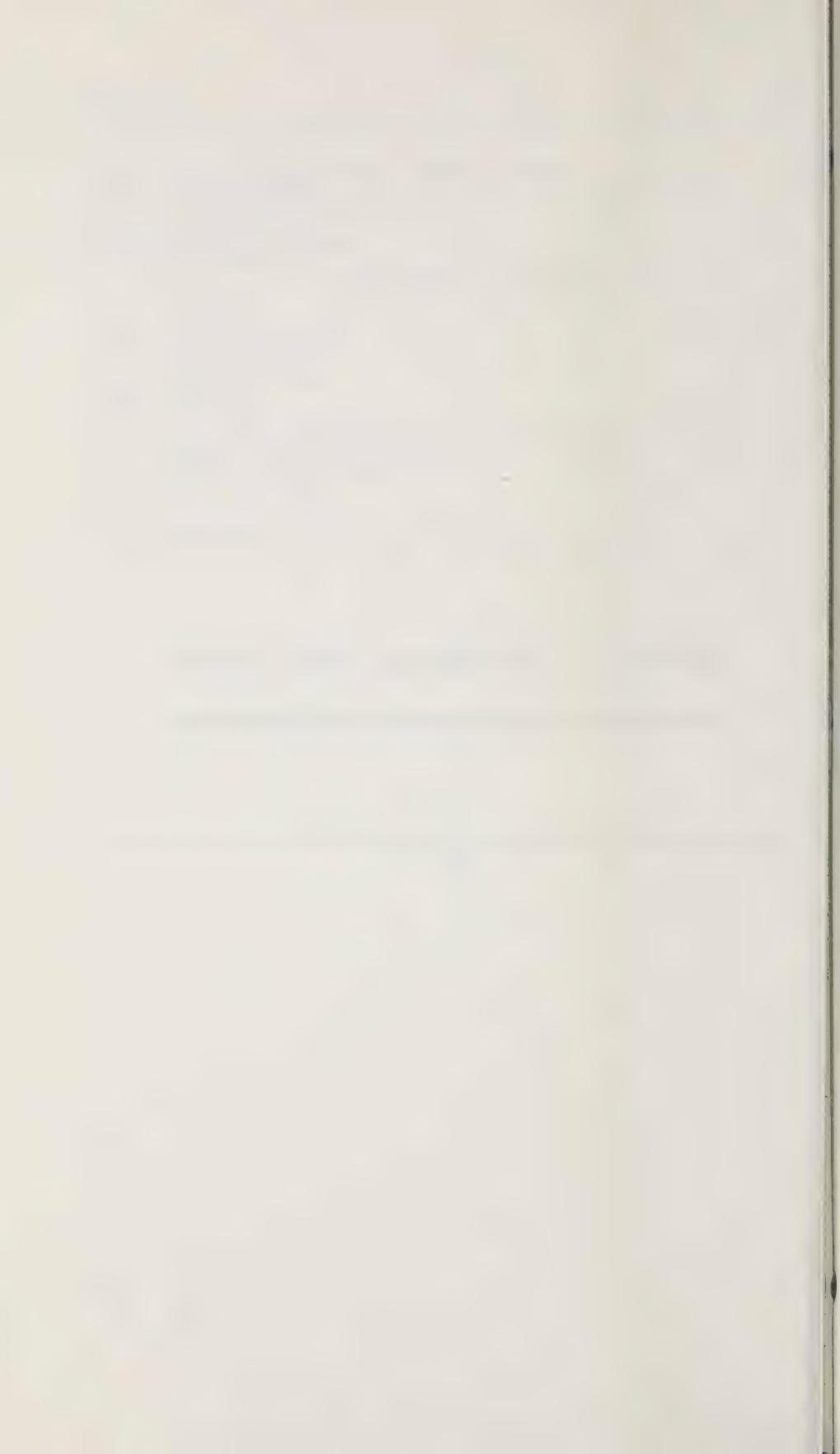
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**TITLE 5, UNITED STATES CODE**  
**Government Organization and Employees**

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## CHAPTER 1—ORGANIZATION

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**§ 101. Executive departments**

The Executive departments are:

- The Department of State.
- The Department of the Treasury.
- The Department of Defense.
- The Department of Justice.
- The Department of the Interior.
- The Department of Agriculture.
- The Department of Commerce.
- The Department of Labor.
- The Department of Health, Education, and Welfare.
- The Department of Housing and Urban Development.
- The Department of Transportation.
- The Department of Energy.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378, amended Pub. L. 89-670, § 10(b), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91-375, § 6(c)(1), Aug. 12 1970, 84 Stat. 775; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609.)

**§ 102. Military departments**

The military departments are:

- The Department of the Army.
- The Department of the Navy.
- The Department of the Air Force.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.)

**§ 103. Government corporation**

For the purpose of this title—

- (1) “Government corporation” means a corporation owned or controlled by the Government of the United States; and
- (2) “Government controlled corporation” does not include a corporation owned by the Government of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.)

**§ 104. Independent establishment**

For the purpose of this title, “independent establishment” means—

- (1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and

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(2) The General Accounting Office.  
(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379, amended Pub. L. 91-375,  
§ 6(c)(2), Aug. 12, 1970, 84 Stat. 775.)

**§ 105. Executive agency**

For the purpose of this title, "Executive agency" means an Executive department, a Government corporation, and an independent establishment. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

## CHAPTER 3—POWERS

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- 302. Delegation of authority.
- 303. Oaths to witnesses.
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**§ 301. Departmental regulations**

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

**§ 302. Delegation of authority**

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

(b) In addition to the authority to delegate, conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him—

(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency; and

(2) by section 3702 of title 44 to authorize the publication of advertisements, notices, or proposals.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379, amended Pub. L. 94-183, § 2(1), Dec. 31, 1975, 89 Stat. 1057.)

**§ 303. Oaths to witnesses**

(a) An employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation.

(b) An employee of the Department of Defense lawfully assigned to investigative duties may administer oaths to witnesses in connection with an official investigation. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379, amended Pub. L. 94-213, Feb. 13, 1976, 90 Stat. 179.)

**§ 304. Subpenas**

(a) The head of an Executive department or military department or bureau thereof in which a claim against the United States is pending may apply to a judge or clerk of a court of the United States to issue a subpoena for a witness within the jurisdiction of the court to appear at a time and place stated in the subpoena before an individual authorized to take depositions to be used in the courts of the United

States, to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined on the subject of the claim.

(b) If a witness, after being served with a subpoena, neglects or refuses to appear, or appearing, refuses to testify, the judge of the district in which the subpoena issued may proceed, on proper process, to enforce obedience to the subpoena, or to punish for disobedience, in the same manner as a court of the United States may in case of process of subpoena ad testificandum issued by the court. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 379.)

### § 305. Systematic agency review of operations

(a) For the purpose of this section, "agency" means an Executive agency, but does not include—

- (1) a Government controlled corporation;
- (2) the Tennessee Valley Authority;
- (3) The Alaska Railroad;
- (4) the Virgin Islands Corporation;
- (5) the Atomic Energy Commission;
- (6) the Central Intelligence Agency;
- (7) the Panama Canal Company; or
- (8) the National Security Agency, Department of Defense.

(b) Under regulations prescribed and administered by the Director of the Bureau of the Budget, each agency shall review systematically the operations of each of its activities, functions, or organization units, on a continuing basis.

(c) The purpose of the reviews includes—

- (1) determining the degree of efficiency and economy in the operation of the agency's activities, functions, or organization units;
- (2) identifying the units that are outstanding in those respects; and
- (3) identifying the employees whose personal efforts have caused their units to be outstanding in efficiency and economy of operations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 380.)

## **CHAPTER 5—ADMINISTRATIVE PROCEDURE**

### **SUBCHAPTER I—GENERAL PROVISIONS**

- SEC.
- 500. Administrative practice ; general provisions.
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  - 502. Administrative practice ; Reserves and National Guardsmen.
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## SUBCHAPTER I—GENERAL PROVISIONS

### § 500. Administrative practice; general provisions

- (a) For the purpose of this section—
  - (1) “agency” has the meaning given it by section 551 of this title; and
  - (2) “State” means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.
- (b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.
- (c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.
- (d) This section does not—
  - (1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;
  - (2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;
  - (3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or
  - (4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.
- (e) Subsections (b)–(d) of this section do not apply to practice before the Patent Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.
- (f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.  
(Added Pub. L. 90-83, § 1(1)(A), Sept. 11, 1967, 81 Stat. 195.)

**§ 501. Advertising practice; restrictions**

An individual, firm, or corporation practicing before an agency of the United States may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the business. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

**§ 502. Administrative practice; Reserves and National Guardsmen**

Membership in a reserve component of the armed forces or in the National Guard does not prevent an individual from practicing his civilian profession or occupation before, or in connection with, an agency of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

**§ 503. Witness fees and allowances**

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

(b) A witness is entitled to the fees and allowances allowed by statute for witnesses in the courts of the United States when—

(1) he is subpenaed under section 304(a) of this title; or

(2) he is subpenaed to and appears at a hearing before an agency authorized by law to hold hearings and subpena witnesses to attend the hearings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381.)

## SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

### § 551. Definitions

For the purpose of this subchapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the Government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix;

(2) “person” includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) “party” includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) “rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) “rule making” means agency process for formulating, amending, or repealing a rule;

(6) “order” means the whole or a part of a final disposition whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) “adjudication” means agency process for the formulation of an order;

(8) "license" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) "licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) "sanction" includes the whole or a part of an agency—

(A) prohibition requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) "relief" includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) "agency proceedings" means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 381; amended Pub. L. 94-409, Sept. 13, 1976, 90 Stat. 1247.)

## § 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any

request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comments, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter *de novo*, and may examine the contents of such agency records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acting arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative

authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the appli-

cable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F) and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383, amended Pub. L. 90-23, § 1, June 5, 1967, 81 Stat. 54; Pub. L. 93-502, §§ 1-3, Nov. 21, 1974, 88 Stat. 1561-1564; Pub. L. 94-409, Sept. 13, 1976, 90 Stat. 1247; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

### § 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13; and

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or

instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) pursuant to the order of a court of competent jurisdiction.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b) (1) or (b) (2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b) (7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his requests, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and, if after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g) (1) (A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENT.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

- (B) the principal purpose or purposes for which the information is intended to be used;
- (C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and
- (D) the effects on him, if any, of not providing all or any part of the requested information;
- (4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—
- (A) the name and location of the system;
  - (B) the categories of individuals on whom records are maintained in the system;
  - (C) the categories of records maintained in the system;
  - (D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;
  - (E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;
  - (F) the title and business address of the agency official who is responsible for the system of records;
  - (G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;
  - (H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and
  - (I) the categories of sources of records in the system;
- (5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;
- (6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;
- (7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;
- (8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;
- (9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such per-

son with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained; and

(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment to any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall annually compile and publish the rules promulgated under this subsection and agency notices published under subsection (e) (4) of this section in a form available to the public at low cost.

(g) (1) CIVIL REMEDIES.—Whenever any agency—

(A) makes a determination under subsection (a) (3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d) (1) of this section;

(C) fails to maintain any record concerning any individual necessary to assure fairness in any determination relating to the

qualification, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g) (1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g) (1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g) (1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the

action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) **RIGHTS OF LEGAL GUARDIANS.**—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i) (1) **CRIMINAL PENALTIES.**—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) **GENERAL EXEMPTIONS.**—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553 (b) (1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title,

the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title the reasons why the system of records is to be exempted from a provision of this section.

(1) (1) ARCHIVAL RECORDS.—Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e) (4) (A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

(m) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) REPORT ON NEW SYSTEMS.—Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personnel or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(p) ANNUAL REPORT.—The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records

which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section.

(q) **EFFECT OF OTHER LAWS.**—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section. (Pub. L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, amended Pub. L. 94-183, § 2(2), Dec. 31, 1975, 89 Stat. 1057.)

## § 552b. Open meetings

### (a) For purposes of this section—

(1) the term "agency" means any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term "members" means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censoring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpoena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d) (1) Action under subsection (e) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (e), or with respect to any information which is proposed to be withheld under subsection (e). A single vote may be taken with respect to a series of meetings, a portion or portions of which are pro-

posed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e) (1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency

determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f) (1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (e), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (e), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (e). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring

a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h) (1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (e) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(l) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title. (Pub. L. 94-409, § 3(a), Sept. 13, 1976, 90 Stat. 1241.)

### § 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without

out opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

- (1) a substantive rule which grants or recognizes an exemption or relieves a restriction;
- (2) interpretive rules and statements of policy; or
- (3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383.)

#### § 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

- (1) a matter subject to a subsequent trial of the law and the facts *de novo* in a court;
- (2) the selection or tenure of an employee, except an administrative law judge appointed under section 3105 of this title;
- (3) proceedings in which decisions rest solely on inspections, tests, or elections;
- (4) the conduct of military or foreign affairs functions;
- (5) cases in which an agency is acting as an agent for a court; or
- (6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

- (1) the time, place, and nature of the hearing;
- (2) the legal authority and jurisdiction under which the hearing is to be held; and
- (3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

- (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and
- (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision

or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

- (1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or
- (2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

- (A) in determining applications for initial licenses;
- (B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or
- (C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 384; amended Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183.)

### § 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure on a statement or

showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 385.)

#### **§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision**

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

- (1) the agency;
- (2) one or more members of the body which comprises the agency; or
- (3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

- (1) administer oaths and affirmations;
- (2) issue subpoenas authorized by law;
- (3) rule on offers of proof and receive relevant evidence;
- (4) take depositions or have depositions taken when the ends of justice would be served;
- (5) regulate the course of the hearing;
- (6) hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) dispose of procedural requests or similar matters;
- (8) make or recommend decisions in accordance with section 557 of this title; and
- (9) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide

for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 386; amended Pub. L. 94-409, Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183.)

#### **§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record**

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decision or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d) (1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the

proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 387; amended Pub. L. 94-409, Sept. 13, 1976, 90 Stat. 1246.)

#### **§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses**

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

#### **§ 559. Effect on other laws; effect of subsequent statute**

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2) (E), 5372, and 7521 of this title, and the provisions of section 5335(a) (B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to

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supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2) (E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly. (Pub L. 89-554, Sept. 6, 1966, 80 Stat. 388, amended Pub. L. 90-623, § 1(1), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221.)

## SUBCHAPTER III—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### § 571. Purpose

It is the purpose of this subchapter to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

### § 572. Definitions

For the purpose of this subchapter—

(1) “administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter, except that it does not include a military or foreign affairs function of the United States;

(2) “administrative agency” means an authority as defined by section 551(1) of this title; and

(3) “administrative procedure” means procedure used in carrying out an administrative program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 388.)

### § 573. Administrative Conference of the United States

(a) The Administrative Conference of the United States consists of not more than 91 nor less than 75 members appointed as set forth in subsection (b) of this section.

(b) The Conference is composed of—

(1) a full-time Chairman appointed for a 5-year term by the President, by and with the advice and consent of the Senate. The Chairman is entitled to pay at the highest rate established by statute for the chairman of an independent regulatory board or commission, and may continue to serve until his successor is appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or an individual designated by the board or commission;

(3) the head of each Executive department or other administrative agency which is designated by the President, or an individual designated by the head of the department or agency;

(4) when authorized by the Council referred to in section 575 (b) of this title, one or more appointees from a board, commission, department, or agency referred to in this subsection, designated by the head thereof with, in the case of a board or commission, the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 36 other members appointed by the Chairman, with the approval of the Council, for terms of 2 years, except that the number of members appointed by the Chairman may at no time be less than one-third nor more than two-fifths of the total number of members. The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of this title for individuals serving without pay. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 389.)

#### **§ 574. Powers and duties of the Conference**

To carry out the purpose of this subchapter, the Administrative Conference of the United States may—

(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States, in connection therewith, as it considers appropriate;

(2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 390).

#### **§ 575. Organization of the Conference**

(a) The membership of the Administrative Conference of the United States meeting in plenary session constitutes the Assembly of the Conference. The assembly has ultimate authority over all activities of the Conference. Specifically, it has the power to—

(1) adopt such recommendations as it considers appropriate for improving administrative procedure. A member who disagrees with a recommendation adopted by the Assembly is entitled to

enter a dissenting opinion and an alternate proposal in the record of the Conference proceedings, and the opinion and proposal so entered shall accompany the Conference recommendation in a publication or distribution thereof; and

(2) adopt bylaws and regulations not inconsistent with this subchapter for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference includes a Council composed of the Chairman of the Conference, who is Chairman of the Council, and 10 other members appointed by the President, of whom not more than one-half shall be employees of Federal regulatory agencies or Executive departments. The President may designate a member of the Council as Vice Chairman. During the absence or incapacity of the Chairman or when that office is vacant, the Vice Chairman shall serve as Chairman. The term of each member, except the Chairman, is 3 years. When the term of a member ends, he may continue to serve until a successor is appointed. However, the service of any member ends when a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment. The Council has the power to—

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman is the chief executive of the Conference. In that capacity he has the power to—

(1) make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government;

(2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to carry out the recommendations of the Conference;

(3) request agency heads to provide information needed by the

Conference, which information shall be supplied to the extent permitted by law;

(4) recommend to the Council appropriate subjects for action by the Conference;

(5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference;

(6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference;

(7) appoint and fix the pay of employees, define their duties and responsibilities, and direct and supervise their activities;

(8) rent office space in the District of Columbia;

(9) provide necessary services for the Assembly, the Council, and the committees of the Conference;

(10) organize and direct studies ordered by the Assembly or the Council, to contract for the performance of such studies with any public or private persons, firm, association, corporation, or institution under title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251-260), and to use from time to time, as appropriate, experts and consultants who may be employed in accordance with section 3109 of this title at rates not in excess of the maximum rate of pay for grade GS-15 as provided in section 5332 of this title;

(11) utilize, with their consent, the services and facilities of Federal agencies and of State and private agencies and instrumentalities with or without reimbursement;

(12) accept, hold, administer, and utilize gifts, devices, and bequests of property, both real and personal, for the purpose of aiding and facilitating the work of the Conference. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairman. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States;

(13) accept voluntary and uncompensated services notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(14) on request of the head of an agency, furnish assistance and advice on matters of administrative procedure; and

(15) exercise such additional authority as the Council or Assembly delegates to him.

The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman, on behalf of the Conference, shall transmit to the President and Congress an annual report and such interim reports as he considers desirable. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 390, amended Pub. L. 92-526, § 1, Oct. 21, 1972, 86 Stat. 1048.)

**§ 576. Appropriations**

To carry out the purposes of this subchapter, there are authorized to be appropriated sums not to exceed \$1,700,000 for the fiscal year ending September 30, 1979, \$2,000,000 for the fiscal year ending September 30, 1980, \$2,300,000 for the fiscal year ending September 30, 1981, and \$2,300,000 for the fiscal year ending September 30, 1982. (Pub. L. 95-293, June 13, 1978, 92 Stat. 317.)

## CHAPTER 7—JUDICIAL REVIEW

### SEC.

- 701. Application; definitions.
- 702. Right of review.
- 703. Form and venue of proceeding.
- 704. Actions reviewable.
- 705. Relief pending review.
- 706. Scope of review.

### § 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) “agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix; and

(2) “person”, “rule”, “order”, “license”, “sanction”, “relief”, and “agency action” have the meanings given them by section 551 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

### § 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant.

ant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; amended Pub. L. 94-574, Oct. 21, 1976, 90 Stat. 2721.)

#### **§ 703. Form and venue of proceeding**

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; amended Pub. L. 94-574, Oct. 21, 1976, 90 Stat. 2721.)

#### **§ 704. Actions reviewable**

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

#### **§ 705. Relief pending review**

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

#### **§ 706. Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitu-

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tional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;
  - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
  - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

## CHAPTER 9—EXECUTIVE REORGANIZATION

**SEC.**

- 901. Purpose.
- 902. Definitions.
- 903. Reorganization plans.
- 904. Additional contents of reorganization plan.
- 905. Limitations on powers.
- 906. Effective date and publication of reorganization plans.
- 907. Effect on other laws, pending legal proceedings, and unexpended appropriations.
- 908. Rules of Senate and House of Representatives on reorganization plans.
- 909. Terms of resolution.
- 910. Introduction and reference of resolution.
- 911. Discharge of committee considering resolution.
- 912. Procedure after report or discharge of committee; debate; vote on final disapproval.

### § 901. Purpose

(a) The Congress declares that it is the policy of the United States—

- (1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;
- (2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;
- (3) to increase the efficiency of the operations of the Government to the fullest extent practicable;
- (4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;
- (5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and
- (6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

(d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 29.)

**§ 902. Definitions**

For the purpose of this chapter—

(1) “agency” means—

(A) an Executive agency or part therof; and

(B) an office or officer in the executive branch;

but does not include the General Accounting Office or the Comptroller General of the United States;

(2) “reorganization” means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) “officer” is not limited by section 2104 of this title.

(Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 30.)

**§ 903. Reorganization plans**

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganization he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations,

which it is expected will be realized as a result of the reorganizations included in the plan.

(c) Any time during the period of thirty calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903-905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of sixty calendar days of continuous session of Congress following the date on which the plan is submitted to Congress. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 31.)

#### **§ 904. Additional contents of reorganization plan**

A reorganization plan transmitted by the President under section 903 of this title—

(1) may change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name on an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 31.)

**§ 905. Limitation on powers**

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

(1) creating a new executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

(2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

(3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;

(4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;

(5) increasing the term of an office beyond that provided by law for the office; or

(6) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress within three years of the date of enactment of the Reorganization Act of 1977. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 32.)

**§ 906. Effective date and publication of reorganization plans**

(a) Except as otherwise provided under subsection (c) of this section, a reorganization plan is effective at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan.

(b) For the purpose of this chapter—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective or, if both Houses of Congress have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the sixty-day period required by subsection (a).

(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 32.)

**§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations**

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency o

function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

(b) For the purpose of subsection (a) of this section, "regulation or other action" means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(d) The appropriations or portions of appropriations unexpended by reason of the operation of the chapter may not be used for any purpose, but shall revert to the Treasury. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 33.)

### **§ 908. Rules of Senate and House of Representatives on reorganization plans**

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by section 909 of this title; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 33.)

### **§ 909. Terms of resolution**

For the purpose of sections 908 through 912 of this title, "resolution" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the \_\_\_\_\_ does not favor the reorganization plan numbered \_\_\_\_\_ transmitted to the Congress by the President on \_\_\_\_\_, 19\_\_\_\_\_, and includes such modifications and revisions as are submitted by the President under section

903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 33.)

### § 910. Introduction and reference of resolution

(a) No later than the first day of session following the day on which a reorganization plan is transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 45 calendar days of continuous session of Congress following the date of such resolution's introduction. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 34.)

### § 911. Discharge of committee considering resolution

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution the first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 45 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 34.)

### § 912. Procedure after report or discharge of committee; debate; vote on final disapproval

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten

hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final approval of the resolution shall occur. (Pub. L. 95-17, Apr. 6, 1977, 91 Stat. 34.)

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate. (Pub. L. 95-17, April 6, 1977, 91 Stat. 35.)

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## **PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES**

<b>CHAPTER</b>		<b>SEC.</b>
11—Office of Personnel Management	-----	1101
12—Merit Systems Protection Board and Special Counsel	-----	1201
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(57)

## CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

### SEC.

- 1101. Office of Personnel Management.
- 1102. Director; Deputy Director; Associate Directors.
- 1103. Functions of the Director.
- 1104. Delegation of authority for personnel management.
- 1105. Administrative procedure.

### § 1101. Office of Personnel Management

The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1119.)

### § 1102. Director; Deputy Director; Associate Directors

(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1119.)

### § 1103. Functions of the Director

(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

- (1) securing accuracy, uniformity, and justice in the functions of the Office;
- (2) appointing individuals to be employed by the Office;
- (3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

(5) executing, administering, and enforcing—

(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

(B) the other activities of the Office including retirement and classification activities;

except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

(6) reviewing the operations under chapter 87 of this title;

(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees; and

(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management.

(b) (1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b) (1), (2), and (3) of this title.

(2) The Director shall take steps to ensure that—

(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1120.)

#### **§ 1104. Delegation of authority for personnel management**

(a) Subject to subsection (b) (3) of this section—

(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service; except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which

are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

(b) (1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b) (2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a) (2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b) (1) of this section, the agency involved shall take any corrective action the Office may require. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1120.)

### § 1105. Administrative procedure

Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553. (Pub. L. 95-454, § 201(a), Oct. 13, 1978, 92 Stat. 1121.)

## CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD AND SPECIAL COUNSEL

### SEC.

- 1201. Appointment of members of the Merit Systems Protection Board.
- 1202. Term of office ; filling vacancies ; removal.
- 1203. Chairman ; Vice Chairman.
- 1204. Special counsel ; appointment and removal.
- 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel.
- 1206. Authority and responsibilities of the Special Counsel.
- 1207. Hearings and decisions on complaints filed by the Special Counsel.
- 1208. Stays of certain personnel actions.
- 1209. Information.

### § 1201. Appointment of members of the Merit Systems Protection Board

The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The Chairman and members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1122.)

### § 1202. Term of office, filling vacancies; removal

(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

(b) A member appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201 of this title.

(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1122.)

### § 1203. Chairman; Vice Chairman

(a) The President shall from time to time, appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

(c) During the absence or disability of both the Chairman and Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1122.)

### § 1204. Special Counsel; appointment and removal

The Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys, by and with the advice and consent of the Senate, for a term of 5 years. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1122.)

### § 1205. Powers and functions of the Merit Systems Protection Board and Special Counsel

(a) The Merit Systems Protection Board shall—

(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

(4) review, as provided in subsection (e) of this section, rules and regulations of the Office of Personnel Management.

(b) (1) Any member of the Merit Systems Protection Board, the Special Counsel, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) Any member of the Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of this title may—

(A) issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and

(B) order the taking of depositions and order responses to written interrogatories.

(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b) (2) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) (1) In any proceeding under subsection (a) (1) of this section, any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

(2) In enforcing compliance with any order under subsection (a) (2) of this section, the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

(3) In carrying out any study under subsection (a) (3) of this section, the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office and may require additional reports from other agencies as needed.

(e) (1) At any time after the effective date of any rule or regulation issued by the Director in carrying out functions under section 1103 of this title, the Board shall review any provision of such rule or regulation—

(A) on its own motion;

(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

(C) on the filing of a written complaint by the Special Counsel requesting such review.

(2) In reviewing any provision of any rule or regulation pursuant to this subsection the Board shall declare such provision—

(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b) of this title; or

(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b) of this title.

(3) (A) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

(B) Any review conducted by the Board pursuant to this subsection shall be limited to determining—

- (i) the validity on its face of the provision under review; and
- (ii) whether the provision under review has been validly implemented.

(C) The Board shall require any agency—

(i) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

(ii) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

(f) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

(g) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

(i) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

(j) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11).

(k) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of

the Board relating to any of its functions under this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1124.)

### § 1206. Authority and responsibilities of the Special Counsel

(a) (1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(2) If the Special Counsel terminates any investigation under paragraph (1) of this subsection, the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the investigation and the reasons therefor.

(3) In addition to authority granted under paragraph (1) of this subsection, the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(b) (1) In any case involving—

(A) any disclosure of information by an employee or applicant for employment which the employee or applicant reasonably believes evidences—

- (i) a violation of any law, rule, or regulation; or
- (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if the disclosure is not specifically prohibited by law and if the information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure by an employee or applicant for employment to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee or applicant reasonably believes evidences—

- (i) a violation of any law, rule, or regulation; or
- (ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

the identify of the employee or applicant may not be disclosed without the consent of the employee or applicant during any investigation under subsection (a) of this section or under paragraph (3) of this subsection, unless the Special Counsel determines that the disclosure of the identity of the employee or applicant is necessary in order to carry out the functions of the Special Counsel.

(2) Whenever the Special Counsel receives information of the type described in paragraph (1) of this subsection, the Special Counsel shall promptly transmit such information to the appropriate agency head.

(3) (A) In the case of information received by the Special Counsel under paragraph (1) of this section, if, after such review as the Spe-

cial Counsel determines practicable (but not later than 15 days after the receipt of the information), the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to the public health or safety, the Special Counsel may, to the extent provided in subparagraph (B) of this paragraph, require the head of the agency to—

(i) conduct an investigation of the information and any related matters transmitted by the Special Counsel to the head of the agency; and

(ii) submit a written report setting forth the findings of the head of the agency within 60 days after the date on which the information is transmitted to the head of the agency or within any longer period of time agreed to in writing by the Special Counsel.

(B) The Special Counsel may require an agency head to conduct an investigation and submit a written report under subparagraph (A) of this paragraph only if the information was transmitted to the Special Counsel by—

(i) any employee or former employee or applicant for employment in the agency which the information concerns; or

(ii) any employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(4) Any report required under paragraph (3)(A) of this subsection shall be reviewed and signed by the head of the agency and shall include—

(A) a summary of the information with respect to which the investigation was initiated;

(B) a description of the conduct of the investigation;

(C) a summary of any evidence obtained from the investigation;

(D) a listing of any violation or apparent violation of any law, rule, or regulation; and

(E) a description of any corrective action taken or planned as a result of the investigation, such as—

(i) changes in agency rules, regulations, or practices;

(ii) the restoration of any aggrieved employee;

(iii) disciplinary action against any employee; and

(iv) referral to the Attorney General of any evidence of a criminal violation.

(5)(A) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in paragraph (3)(A)(ii) of this subsection, the Special Counsel may transmit a copy of the information which was transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the head of the agency to file the required report.

(B) In any case in which evidence of a criminal violation obtained by an agency in an investigation under paragraph (3) of this subsection is referred to the Attorney General—

(i) the report shall not be transmitted to the complainant; and

(ii) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(6) Upon receipt of any report of the head of any agency required under paragraph (3)(A)(ii) of this subsection, the Special Counsel shall review the report and determine whether—

(A) the findings of the head of the agency appear reasonable; and

(B) the agency's report under paragraph (3)(A)(ii) of this subsection contains the information required under paragraph (4) of this subsection.

(7) Whenever the Special Counsel transmits any information to the head of the agency under paragraph (2) of this subsection but does not require an investigation under paragraph (3) of this subsection, the head of the agency shall, within a reasonable time after the information was transmitted, inform the Special Counsel, in writing, of what action has been or is to be taken and when such action will be completed. The Special Counsel shall inform the complainant of the report of the agency head.

(8) Except as specifically authorized under this subsection, the provisions of this subsection shall not be considered to authorize disclosure of any information by any agency or any person which is—

(A) specifically prohibited from disclosure by any other provision of law; or

(B) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(9) In any case under subsection (b)(1)(B) of this section involving foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(c)(1)(A) If, in connection with any investigation under this section, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved, and to the Office, and may report the determination, findings, and recommendations to the President. The Special Counsel may include in the report recommendations as to what corrective action should be taken.

(B) If, after a reasonable period, the agency has not taken the corrective action recommended, the Special Counsel may request the Board to consider the matter. The Board may order such corrective action as the Board considers appropriate, after opportunity for comment by the agency concerned and the Office of Personnel Management.

(2)(A) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

(B) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel may proceed with any investigation or proceeding instituted under this section notwithstanding that the alleged violation has been reported to the Attorney General.

(3) If, in connection with any investigation under this section, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred which is not referred to in paragraph (1) or (2) of this subsection, the violation shall be reported to the head of the agency involved. The Special Counsel shall require, within 30 days of the receipt of the report by the agency, a certification by the head of the agency which states—

(A) that the head of the agency has personally reviewed the report; and

(B) what action has been, or is to be, taken, and when the action will be completed.

(d) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsections (b) (3) (A) and (c) (3) of this section, together with—

(1) reports by the heads of agencies under subsection (b) (3)

(A) of this section, in the case of matters referred under subsection (b); and

(2) certifications by heads of agencies under subsection (c) (3), in the case of matters referred under subsection (c).

The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

(e) (1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning—

(A) political activity prohibited under subchapter III of chapter 73 of this title, relating to political activities by Federal employees;

(B) political activity prohibited under chapter 15 of this title, relating to political activities by certain State and local officers and employees;

(C) arbitrary or capricious withholding of information prohibited under section 552 of this title, except that the Special Counsel shall make no investigation under this subsection of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

(E) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(2) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in paragraph (1) (D) or

(1) (E) of this subsection if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(f) During any investigation initiated under this section, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

(g) (1) Except as provided in paragraph (2) of this subsection, if the Special Counsel determines that disciplinary action should be taken against any employee—

(A) after any investigation under this section, or

(B) on the basis of any knowing and willful refusal or failure by an employee to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing his determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Merit Systems Protection Board in accordance with section 1207 of this title.

(2) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in paragraph (1) of this subsection, together with any response by the employee, shall be presented to the President for appropriate action in lieu of being presented under section 1207 of this title.

(h) If the Special Counsel believes there is a pattern of prohibited personnel practices and such practices involve matters which are not otherwise appealable to the Board under section 7701 of this title, the Special Counsel may seek corrective action by filing a written complaint with the Board against the agency or employee involved and the Board shall order such corrective action as the Board determines necessary.

(i) The Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board and the Special Counsel shall not have any right of judicial review in connection with such intervention.

(j) (1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33 of this title).

(k) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

(1) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73 of this title).

(m) The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this section, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this subsection shall include whatever recommendations for legislation or other action by Congress the Special Counsel may deem appropriate. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1125.)

### **§ 1207. Hearings and decisions on complaints filed by the Special Counsel**

(a) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under section 1206(g) of this title is entitled to—

(1) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) be represented by an attorney or other representative;

(3) a hearing before the Board or an administrative law judge appointed under section 3105 of this title and designated by the Board;

(4) have a transcript kept of any hearing under paragraph (3) of this subsection; and

(5) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(b) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed \$1,000.

(c) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this section may obtain judicial review of the order in the United States court of appeals for the judicial circuit in which the employee resides or is employed at the time of the action.

(d) In the case of any State or local officer or employee under chapter 15 of this title, the Board shall consider the case in accordance with the provisions of such chapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1130.)

### **§ 1208. Stays of certain personnel actions**

(a) (1) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 15 calendar days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(2) Any member of the Board requested by the Special Counsel to order a stay under paragraph (1) of this subsection shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(3) Unless denied under paragraph (2) of this subsection, any stay under this subsection shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(b) Any member of the Board may, on the request of the Special Counsel, extend the period of any stay ordered under subsection (a) of this section for a period of not more than 30 calendar days.

(c) The Board may extend the period of any stay granted under subsection (a) of this section for any period which the Board considers appropriate, but only if the Board concurs in the determination of the Special Counsel under such subsection, after an opportunity is provided for oral or written comment by the Special Counsel and the agency involved. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1130.)

### **§ 1209. Information**

(a) Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

(b) The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices. (Pub. L. 95-454, § 202(a), Oct. 13, 1978, 92 Stat. 1131.)

## CHAPTER 13—SPECIAL AUTHORITY

### SEC.

- 1301. Rules.
- 1302. Regulations.
- 1303. Investigations; reports.
- 1304. Loyalty investigations; reports; revolving fund.
- 1305. Administrative law judges.
- 1306. Oaths to witnesses.
- 1307. Minutes.
- 1308. Annual reports.

### § 1301. Rules

The Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 1302. Regulations

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 1303. Investigations; reports

The Office of Personnel Management, Merit Systems Protection Board, and Special Counsel may investigate and report on matters concerning—

(1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competi-

tive service and the regulations prescribed by the Office of Personnel Management under section 1302(a) of this title; and

(2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 1304. Loyalty investigations; reports; revolving fund

(a) The Office of Personnel Management shall conduct the investigations and issue the reports required by the following statutes—

(1) sections 272b, 281b(e), 209a, and 1434 of title 22;

(2) section 1874(c) of title 42; and

(3) section 1203(e) of title 6, District of Columbia Code.

(b) When an investigation under subsection (a) of this section develops data indicating that the loyalty of the individual being investigated is questionable, the Office shall refer the matter to the Federal Bureau of Investigation for a full field investigation, a report of which shall be furnished to the Office for its information and appropriate action.

(c) When the President considers it in the national interest, he may have the investigations of a group or class, which are required by subsection (a) of this section, made by the Federal Bureau of Investigation rather than the Office.

(d) The investigation and report required by subsection (a) of this section shall be made by the Federal Bureau of Investigation rather than the Office for those specific positions which the Secretary of State certifies are of a high degree of importance or sensitivity.

(e) (1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training and such other functions as the Office is authorized or required to perform on a reimbursable basis. However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

(2) The capital of the fund consists of the aggregate of—

(A) appropriations made to provide capital for the fund, which appropriations are hereby authorized; and

(B) the sum of the fair and reasonable value of such supplies, equipment, and other assets as the Office from time to time transfers to the fund (including the amount of the unexpended balances of appropriations or funds relating to activities the financing of which is transferred to the fund) less the amount of related liabilities, the amount of unpaid obligations, and the value of accrued annual leave of employees, which are attributable to the activities the financing of which is transferred to the fund.

(3) The fund shall be credited with—

(A) advances and reimbursements from available funds of the Office or other agencies, or from other sources, for those services and supplies provided at rates estimated by the Office as adequate

to recover expenses of operation (including provision for accrued annual leave of employees and depreciation of equipment); and

(B) receipts from sales or exchanges of property, and payments for loss of or damage to property, accounted for under the fund.

(4) Any unobligated and unexpended balances in the fund which the Office determines to be in excess of amounts needed for activities financed by the fund shall be deposited in the Treasury of the United States as miscellaneous receipts.

(5) The Office shall prepare a business-type budget providing full disclosure of the results of operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations.

(6) The Comptroller General of the United States shall, as a result of his periodic reviews of the activities financed by the fund, report and make such recommendations as he deems appropriate to the Committees on Post Office and Civil Service of the Senate and House of Representatives at least once every three years.

(f) An agency may use available appropriations to reimburse the Office or the Federal Bureau of Investigation for the cost of investigations, training, and functions performed for them under this section, or to make advances toward their cost. These advances and reimbursements shall be credited directly to the applicable appropriations of the Office or the Federal Bureau of Investigation.

(g) This section does not affect the responsibility of the Federal Bureau of Investigation to investigate espionage, sabotage, or subversive acts. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 401, amended Pub. L. 91-189, Dec. 30, 1969, 83 Stat. 851; Pub. L. 91-648, § 510, Jan. 5, 1971, 84 Stat. 1928; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 1305. Administrative law judges**

For the purpose of sections 3105, 3344, 4301(2)(D), and 5372 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may investigate, require reports by agencies, issue reports, including an annual report to Congress, prescribe regulations, appoint advisory committees as necessary, recommend legislation, subpoena witnesses and records, and pay witness fees as established for the courts of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 402, amended Pub. L. 90-83, § 1(3), Sept. 11, 1967, 81 Stat. 196; Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

### **§ 1306. Oaths to witnesses**

The Director of the Office of Personnel Management and authorized representatives of the Director may administer oaths to witnesses in matters pending before the Office (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### **§ 1307. Minutes**

The Office of Personnel Management shall keep minutes of its proceedings. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 402; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 1308. Annual reports**

(a) The Office of Personnel Management shall make an annual report to the President for transmittal to Congress. The report shall include—

(1) a statement of the Office's actions in the administration of the competitive service, the rules and regulations and exceptions thereto in force, the reasons for exceptions to the rules, the practical effects of the rules and regulations, and any recommendations for the more effectual accomplishment of the purposes of the provisions of this title that relate to the administration of the competitive service;

(2) the results of the incentive awards program authorized by chapter 45 of this title with related recommendations;

(3) at the end of each fiscal year, the names, addresses, and nature of employment of the individuals on whom the Office has imposed a penalty for prohibited political activity under section 7325 of this title with a statement of the facts on which action was taken, and the penalty imposed; and

(4) a statement, in the form determined by the Office with the approval of the President, on the training of employees under chapter 41 of this title, including—

(A) a summary of information concerning the operation and results of the training programs and plans of the agencies;

(B) a summary of information received by the Office from the agencies under section 4113(b) of this title; and

(C) the recommendations and other matters considered appropriate by the President or the Office or required by Congress.

(b) The Office shall annually provide an analysis to Congress of the administration and operation of chapter 41 of this title.

(c) The Office shall publish an annual report on the operation of subchapter III of chapter 83 of this title, including a statement concerning the status of the Civil Service Retirement and Disability Fund.

(d) The Office shall report annually to Congress on the operation of chapter 87 of this title.

(e) The Office shall report annually to Congress on the operation of chapter 89 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 402, amended Pub. L. 91-93, § 104, Oct. 20, 1969, 81 Stat. 138; Pub. L. 93-156, Nov. 21, 1973, 87 Stat. 623; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

Sec.

- 1501. Definitions.
- 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
- 1503. Nonpartisan candidacies permitted.
- 1504. Investigations; notice of hearing.
- 1505. Hearings; adjudications; notice of determinations.
- 1506. Orders; withholding loans or grants; limitations.
- 1507. Subpenas and depositions.
- 1508. Judicial review.

### § 1501. Definitions

For the purpose of this chapter—

(1) “State” means a State or territory or possession of the United States;

(2) “State or local agency” means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) “Federal agency” means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) “State or local officer or employee” means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 403, amended Pub. L. 93-443, § 401(c), Oct. 15, 1974, 88 Stat. 1290.)

### § 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a) (3) of this section does not apply to—

- (1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;
- (2) the mayor of a city;
- (3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system; or
- (4) an individual holding elective office.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 404, amended Pub. L. 93-443, § 401(a), Oct. 15, 1974, 88 Stat. 1290.)

#### § 1503. Nonpartisan candidacies permitted

Section 1502(a) (3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 404, amended Pub. L. 93-443, § 401(b), Oct. 15, 1974, 88 Stat. 1290.)

#### § 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 405; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

#### § 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 405; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

### § 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or  
(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency; the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by section 1508 of this title, a determination or order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 405; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

### § 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce the documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpoena on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpoena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 406; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

#### § 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

- (1) the court specifically orders a stay; and
- (2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusion. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take

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such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 406; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

## **PART III—EMPLOYEES**

### **Subpart A—General Provisions**

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**Subpart A—General Provisions****CHAPTER 21—DEFINITIONS****SEC.**

- 2101. Civil service; armed forces; uniformed services.
- 2101a. The Senior Executive Service.
- 2102. The competitive service.
- 2103. The excepted service.
- 2104. Officer.
- 2105. Employee.
- 2106. Member of Congress.
- 2107. Congressional employee.
- 2108. Veteran: disabled veteran; preference eligible.
- 2109. Air traffic controller.

**§ 2101. Civil service; armed forces; uniformed services**

For the purpose of this title—

(1) the “civil service” consists of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services;

(2) “armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard; and

(3) “uniformed services” means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the Environmental Science Services Administration.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408, amended Pub. L. 90-83, § 1(4), Sept. 11, 1967, 81 Stat. 196.)

**§ 2101a. The Senior Executive Service**

The “Senior Executive Service” consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title). (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1154.)

**§ 2102. The competitive service**

(a) The “competitive service” consists of—

(1) all civil service positions in the executive branch, except—

(A) positions which are specifically excepted from the competitive service by or under statute;

(B) positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and

(C) positions in the Senior Executive Service;

(2) civil service positions not in the executive branch which are specifically included in the competitive service by statute; and

(3) positions in the government of the District of Columbia which are specifically included in the competitive service by statute.

(b) Notwithstanding subsection (a)(1)(B) of this section, the "competitive service" includes positions to which appointments are made by nomination for confirmation by the Senate when specifically included therein by statute.

(c) As used in other Acts of Congress, "classified civil service" or "classified service" means the "competitive service". (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1154.)

### **§ 2103. The excepted service**

(a) For the purpose of this title, the "excepted service" consists of those civil service positions which are not in the competitive service or the Senior Executive Service.

(b) As used in other Acts of Congress, "unclassified civil service" or "unclassified service" means the "excepted service". (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1154.)

### **§ 2104. Officer**

(a) For the purpose of this title, "officer", except as otherwise provided by this section or when specifically modified, means a justice or judge of the United States and an individual who is—

(1) required by law to be appointed in the civil service by one of the following acting in an official capacity—

- (A) the President;
- (B) a court of the United States;
- (C) the head of an Executive agency; or
- (D) the Secretary of a military department;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an authority named by paragraph (1) of this section, or the Judicial Conference of the United States, while engaged in the performance of the duties of his office.

(b) Except as otherwise provided by law, an officer of the United States Postal Service or of the Postal Rate Commission is deemed not an officer for purposes of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408, amended Pub. L. 91-375, § 6(c)(3), Aug. 12, 1970, 84 Stat. 775.)

### **§ 2105. Employee**

(a) For the purpose of this title, "employee", except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—

(1) appointed in the civil service by one of the following acting in an official capacity—

- (A) the President;
- (B) a Member or Members of Congress, or the Congress;
- (C) a member of a uniformed service;
- (D) an individual who is an employee under this section;
- (E) the head of a Government controlled corporation; or
- (F) the adjutants general designated by the Secretary concerned under section 709(c) of title 32, United States Code;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

(b) An individual employed at the United States Naval Academy in the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber shops, and the midshipmen's store, except an individual employed by the Academy dairy, is deemed an employee.

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter 53 and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

(2) subchapter I of chapter 81 and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

(d) A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity.

(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Rate Commission is deemed not an employee for purposes of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409, amended Pub. L. 90-486, § 4, Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-375, § 6(c)(4), Aug. 12, 1970, 84 Stat. 775; Pub. L. 92-392, § 2, Aug. 19, 1972, 86 Stat. 573; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1217 and 1224.)

### § 2106. Member of Congress

For the purpose of this title, "Member of Congress" means the Vice President, a member of the Senate or the House of Representatives, a Delegate from the District of Columbia, and the Resident Commissioner from Puerto Rico (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409, amended Pub. L. 91-405, § 204(b), Sept. 22, 1970, 84 Stat. 852.)

### § 2107. Congressional employee

For the purpose of this title, "Congressional employee" means—

(1) an employee of either House of Congress, of a committee of either House, or of a joint committee of the two Houses;

(2) an elected officer of either House who is not a Member of Congress;

(3) the Legislative Counsel of either House and an employee of his office;

(4) a member of the Capitol Police;

(5) an employee of a Member of Congress if the pay of the employee is paid by the Secretary of the Senate or the Clerk of the House of Representatives;

(6) Repealed. Pub. L. 90-83, § 1(5)(A), Sept. 11, 1967, 81 Stat. 196;

(7) the Architect of the Capitol and an employee of the Architect of the Capitol;

(8) an employee of the Botanic Garden; and

(9) an employee of the Capitol Guide Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409, amended Pub. L. 90-83, § 1(5), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-510, § 442(a), Oct. 26, 1970, 84 Stat. 1191.)

### § 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) “veteran” means an individual who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955; or

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before the date of the enactment of the Veterans’ Education and Employment Assistance Act of 1976, not including service under section 511(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

and who has been separated from the armed forces under honorable conditions;

(2) “disabled veteran” means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Veterans’ Administration or a military department; [and] <sup>1</sup>

(3) “preference eligible” means, *except as provided in paragraph (4) of this section—<sup>1</sup>*

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(G) the mother of a service-connected permanently and totally disabled veteran, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed.<sup>1</sup>

(4) except for the purposes of chapters 43 and 75 of this title, "preference eligible" does not include a retired member of the armed forces unless—

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) "retired member of the armed forces" means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member, but does not include applicants for, or members of, the Senior Executive Service.<sup>1</sup>

(Pub L. 89-554, Sept. 6, 1966, 80 Stat. 410, amended Pub. L. 90-83, § 1(6), Sept. 11, 1967, 81 Stat. 196; Pub. L. 90-623, § 1(2), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 92-187, § 1 Dec. 15, 1971, 85 Stat. 644; Pub. L. 95-50, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1147, 1154.)

## § 2109. Air traffic controller

For the purpose of this title, "air traffic controller" or "controller" means an employee of the Department of Transportation who is actively engaged in the separation and control of air traffic, or who is the immediate supervisor of an employee actively engaged in the separation and control of air traffic, in an air traffic control facility. The Secretary of Transportation may prescribe regulations to determine the application of this section. (Added Pub. L. 92-297, § 1(a) May 16, 1972, 86 Stat. 141.)

<sup>1</sup> The effective date of the changes to this section which appear in black brackets and italics is Oct. 1, 1980.

## CHAPTER 23—MERIT SYSTEM PRINCIPLES

**SEC.**

- 2301. Merit system principles.
- 2302. Prohibited personnel practices.
- 2303. Prohibited personnel practices in the Federal Bureau of Investigation.
- 2304. Responsibility of the General Accounting Office.
- 2305. Coordination with certain other provisions of law.

### § 2301. Merit system principles

- (a) This section shall apply to—
  - (1) an Executive agency;
  - (2) the Administrative Office of the United States Courts; and
  - (3) the Government Printing Office.
- (b) Federal personnel management should be implemented consistent with the following merit system principles:
  - (1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
  - (2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.
  - (3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sectors, and appropriate incentives and recognition should be provided for excellence in performance.
  - (4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.
  - (5) The Federal work force should be used efficiently and effectively.
  - (6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.
  - (7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

- (A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and,
- (B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

- (A) a violation of any law, rule, or regulation, or
- (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

- (1) with respect to any agency (as defined in section 2302(a) (2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives; which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles. (Pub.L. 95-454, Oct. 13, 1978, 92 Stat. 1113.)

## § 2302. Prohibited personnel practices

(a) (1) For the purpose of this title, “prohibited personnel practice” means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) “personnel action” means—

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph; and

(x) any other significant change in duties or responsibilities which is inconsistent with the employee’s salary or grade level;

with respect to an employee in, or applicant for, a covered position in an agency;

(B) "covered position" means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.

(C) "agency" means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—

(i) a Government corporation;

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for—

(A) a disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) a disclosure to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, or information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or the United States; or

(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1114.)

### **2303. Prohibited personnel practices in the Federal Bureau of Investigation**

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, "personnel action" means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the

Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with the provisions of section 1206 of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1117.)

#### **§ 2304. Responsibility of the General Accounting Office**

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) the General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

(1) significant actions taken by the Board to carry out its functions under this title; and

(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1118.)

#### **§ 2305. Coordination with certain other provisions of law**

No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled "An Act to provide certain administrative authorities for the National Security Agency, and for other purposes", approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled "An Act to amend the Internal Security Act of 1950", approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831-835). (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1118.)

## **CHAPTER 29—COMMISSIONS, OATHS, RECORDS, AND REPORTS**

### **SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS**

- SEC.
- 2901. Commission of an officer.
  - 2902. Commission ; where recorded.
  - 2903. Oath ; authority to administer.
  - 2904. Oath ; administered without fees.
  - 2905. Oath ; renewal.
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### **SUBCHAPTER II—REPORTS**

- 2951. Reports to the Office of Personnel Management.
- 2952. Time of making annual reports.
- 2953. Reports to Congress on additional employee requirements.
- 2954. Information to committees of Congress on request.

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## SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS

### § 2901. Commission of an officer

The President may make out and deliver, after adjournment of the Senate, the commission of an officer whose appointment has been confirmed by the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 411.)

### § 2902. Commission; where recorded

(a) Except as provided by subsections (b) and (c) of this section, the Secretary of State shall make out and record, and affix the seal of the United States to, the commission of an officer appointed by the President. The seal of the United States may not be affixed to the commission before the commission has been signed by the President.

(b) The commission of an officer in the civil service or uniformed services under the control of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of a military department, the Secretary of the Interior, or the Secretary of the Treasury shall be made out and recorded in the department in which he is to serve under the seal of that department. The departmental seal may not be affixed to the commission before the commission has been signed by the President.

(c) The commissions of judicial officers and United States attorneys and marshals, appointed by the President, by and with the advice and consent of the Senate, and other commissions which before August 8, 1888, were prepared at the Department of State on the requisition of the Attorney General, shall be made out and recorded in the Department of Justice under the seal of that department and countersigned by the Attorney General. The departmental seal may not be affixed to the commission before the commission has been signed by the President. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 411, amended Pub. L. 94-183, § 2(3), Dec. 31, 1975, 89 Stat. 1057.)

### § 2903. Oath; authority to administer

(a) The oath of office required by section 3331 of this title may be administered by an individual authorized by the laws of the United States or local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered.

(b) An employee of an Executive agency designated in writing by the head of the Executive agency, or the Secretary of a military department with respect to an employee of his department, may administer—

(1) the oath of office required by section 3331 of this title, incident to entrance into the executive branch; or

(2) any other oath required by law in connection with employment in the executive branch.

(c) An oath authorized or required under the laws of the United States may be administered by—

(1) the Vice President; or

(2) an individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 411.)

#### **§ 2904. Oath; administered without fees**

An employee of an Executive agency who is authorized to administer the oath of office required by section 3331 of this title, or any other oath required by law in connection with employment in the executive branch, may not charge or receive a fee or pay for administering the oath. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 412.)

#### **§ 2905. Oath; renewal**

(a) An employee of an Executive agency or an individual employed by the government of the District of Columbia who, on original appointment, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath because of a change in status so long as his service is continuous in the agency in which he is employed, unless, in the opinion of the head of the Executive agency, the Secretary of a military department with respect to an employee of his department, or the Commissioners of the District of Columbia, the public interest so requires.

(b) An individual who, on appointment as an employee of a House of Congress, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath so long as his service as an employee of that House of Congress is continuous. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 412.)

#### **§ 2906. Oath; custody**

The oath of office taken by an individual under section 3331 of this title shall be delivered by him to, and preserved by, the House of Congress, agency, or court to which the office pertains. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 412.)

## SUBCHAPTER II—REPORTS

### § 2951. Reports to the Office of Personnel Management

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that—

(1) the appointing authority notify the Office of Personnel Management in writing of the following actions and their dates as to each individual selected for appointment in the competitive service from among those who have been examined—

- (A) appointment and residence of appointee;
- (B) separation during probation;
- (C) transfer;
- (D) resignation; and
- (E) removal; and

(2) the Office keep records of these actions.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 412; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 2952. Time of making annual reports

Except when a different time is specifically prescribed by statute, the head of each Executive department or military department shall make the annual reports required to be submitted to Congress, at the beginning of each regular session of Congress. The reports shall cover the transactions of the preceding year. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 413.)

### § 2953. Reports to Congress on additional employee requirements

(a) Each report, recommendation, or other communication, of an official nature, of an Executive agency which—

(1) relates to pending or proposed legislation which, if enacted, will entail an estimated annual expenditure of appropriated funds in excess of \$1,000,000;

(2) is submitted or transmitted to Congress or a committee thereof in compliance with law or on the initiative of the appropriate authority of the executive branch; and

(3) officially proposes or recommends the creation or expansion, either by action of Congress or by administrative action, of a function, activity, or authority of the Executive agency to be in addition to those function, activities, and authorities thereof existing when the report, recommendation, or other communication is so submitted or transmitted;

shall contain a statement, concerning the Executive agency, for each of the first 5 fiscal years during which each additional or expanded function, activity, or authority so proposed or recommended is to be in effect, setting forth the following information—

- (A) the estimated maximum additional—  
(i) man-years of civilian employment, by general categories of positions;  
(ii) expenditures for personal services; and  
(iii) expenditures for all purposes other than personal services;

which are attributable to the function, activity, or authority and which will be required to be effected by the Executive agency in connection with the performance thereof; and

(B) such other statement, discussion, explanation, or other information as is considered advisable by the appropriate authority of the executive branch or that is required by Congress or a committee thereof.

- (b) Subsection (a) of this section does not apply to—  
(1) the Central Intelligence Agency;  
(2) a Government controlled corporation; or  
(3) the General Accounting Office.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 413.)

#### **§ 2954. Information to committees of Congress on request**

An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Government Operations of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 413.)

## Subpart B—Employment and Retention

### CHAPTER 31—AUTHORITY FOR EMPLOYMENT

#### SUBCHAPTER I—EMPLOYMENT AUTHORITIES

SEC.

- 3101. General authority to employ.
- 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees.
- 3103. Employment at seat of Government only for services rendered.
- 3104. Employment of specially qualified scientific and professional personnel.
- 3105. Appointment of administrative law judges.
- 3106. Employment of attorneys; restrictions.
- 3107. Employment of publicity experts; restrictions.
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- 3110. Employment of relatives; restrictions.
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#### SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

- 3131. The Senior Executive Service.
- 3132. Definitions and exclusions.
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- 3135. Biennial report.
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#### SUBCHAPTER I—EMPLOYMENT AUTHORITIES

##### § 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 414.)

##### § 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees

- (a) For the purpose of this section—
  - (1) “agency” means—
    - (A) an Executive agency;
    - (B) the Library of Congress; and
    - (C) the government of the District of Columbia;
  - (2) “head of each agency” means the Commissioner of the District of Columbia with respect to the government of the District of Columbia;
  - (3) “blind employee” means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned and under regulations of the

head of that agency, that he has an impairment of sight, either permanent or temporary, which is so severe or disabling that the employment of a reading assistant or assistants for that individual is necessary or desirable to enable him properly to perform his work;

(4) "deaf employee" means an individual employed by an agency who, in accordance with regulations prescribed by the head of the agency, establishes to the satisfaction of the appropriate authority of the agency concerned that the employee has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform the work of the employee; and

(5) "nonprofit organization" means an organization determined by the Secretary of the Treasury to be an organization described by section 501(c) of title 26 which is exempt from taxation under section 501(a) of title 26.

(b) The head of each agency may employ a reading assistant or assistants for a blind employee and interpreting assistant or assistants for a deaf employee of his agency, to serve without pay from the agency, without regard to—

(1) the provisions of this title governing appointment in the competitive service; and

(2) chapter 51 and subchapter III of chapter 53 of this title. A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for services performed by the assistant by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18, so employed may be paid and receive pay for his services as reading assistant by and from the blind employee or a nonprofit organization, without regard to section 209 of title 18.

(c) This section may not be held or considered to prevent or limit in any way the assignment to a blind or deaf employee by an agency of clerical or secretarial assistance, at the expense of the agency and under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.

(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter III of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 414, amended Pub. L. 90-623, § 1(3), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95-454, § 302(a), Oct. 13, 1978, 92 Stat. 1145.)

### **§ 3103. Employment at seat of Government only for services rendered**

An individual may be employed in the civil service in an Executive department at the seat of Government only for services actually rendered in connection with and for the purposes of the appropriation

from which he is paid. An individual who violates this section shall be removed from the service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415.)

#### § 3104. Employment of specially qualified scientific and professional personnel

(a) (1) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions (not to exceed 517) for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established only by action of the Director.

(2) The provisions of paragraph (1) of this subsection shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

(3) In addition to the number of positions authorized by paragraph (1) of this subsection, the Librarian of Congress may establish, without regard to the second sentence of paragraph (1) of this subsection, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel.

(b) The head of each agency authorized to fix under section 5371 of this title the pay for positions established under this section shall submit to Congress not later than December 31 of each year (or in the case of the Administrator of the National Aeronautics and Space Administration not later than February 1 of each year), a report setting forth—

(1) the number of these positions established in his agency during that calendar year (or in the case of the National Aeronautics and Space Administration during the previous calendar year); and

(2) the name, rate of pay, and description of the qualifications of each incumbent, together with a statement of the functions performed by each.

When the head of such an agency considers full public report on these items detrimental to the national security, he may omit the items from his annual report and, instead, present the information in executive session of such committee of a House of Congress as the presiding officer thereof may designate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415, amended Pub. L. 90-83, § 1(7), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-375, § 6(c)(5), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1178 and 1221.)

#### § 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415; amended Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183.)

**§ 3106. Employment of attorneys; restrictions**

Except as otherwise authorized by law, the head of an Executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice. This section does not apply to the employment and payment of counsel under section 1037 of title 10. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415.)

**§ 3107. Employment of publicity experts; restrictions**

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416.)

**§ 3108. Employment of detective agencies; restrictions**

An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416).

**§ 3109. Employment of experts and consultants; temporary or intermittent**

(a) For the purpose of this section—

(1) "agency" has the meaning given it by section 5721 of this title; and

(2) "appropriation" includes funds made available by statute under section 849 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(c) Positions in the Senior Executive Service may not be filled under the authority of subsection (b) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1160.)

**§ 3110. Employment of relatives; restrictions**

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) an office, agency, or other establishment in the legislative branch;

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible (Added Pub. L. 90-206, § 221(a), Dec. 16, 1967, 81 Stat. 640; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 3111. Acceptance of volunteer service

(a) For the purpose of this section, "student" means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim

between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service—

- (1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;
- (2) is to be uncompensated; and
- (3) will not be used to displace any employee.

(c) Any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims). (Added, Pub. L. 95-454, § 301(a), Oct. 13, 1978, 92 Stat. 1144.)

#### **§ 3112. Disabled veterans; noncompetitive appointment**

Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more. (Added, Pub. L. 95-454, 92 Stat. 1147, Oct. 13, 1978.)

## SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

### § 3131. The Senior Executive Service

It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

- (1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;
- (2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);
- (3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;
- (4) recognize exceptional accomplishment;
- (5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;
- (6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;
- (7) protect senior executives from arbitrary or capricious actions;
- (8) provide for program continuity and policy advocacy in the management of public programs;
- (9) maintain a merit personnel system free of prohibited personnel practices;
- (10) ensure accountability for honest, economical, and efficient Government;
- (11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;
- (12) provide for the initial and continuing systematic development of highly competent senior executives;
- (13) provide for an executive system which is guided by the public interest and free from improper political interference; and
- (14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1154.)

**§ 3132. Definitions and exclusions**

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(2) “Senior Executive Service position” means any position in an agency which is in GS-16, 17, or 18 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

(A) directs the work of an organization unit;

(B) is held accountable for the success of one or more specific programs or projects;

(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

(D) supervises the work of employees other than personal assistants; or

(E) otherwise exercises important policy-making, policy-determining, or other executive functions;

but does not include—

(i) any position in the Foreign Service of the United States;

(ii) an administrative law judge position under section 3105 of this title; or

(iii) any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);

(3) “senior executive” means a member of the Senior Executive Service;

(4) “career appointee” means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) “limited term appointee” means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) “limited emergency appointee” means an individual appointed under a nonrenewable appointment, not to exceed 18

months to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

(7) "noncareer appointee" means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) "career reserved position" means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) "general position" means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

(1) review the application and stated reasons,

(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written

determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—

(1) any agency is excluded under subsection (c) of this section, or

(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1155.)

### **§ 3133. Authorization of positions; authority for appointment**

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds

appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which before the date of such Act, were authorized to be filled only through competitive civil service examination.

(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which—

(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

(B) involve significant participation in the major political policies of the President; or

(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1158.)

#### **§ 3134. Limitations on noncareer and limited appointments**

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1159.)

### § 3135. Biennial report

(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include—

(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

(2) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for the then current fiscal year;

(3) the position titles and descriptions of Senior Executive Service positions designated for the then current fiscal year;

(4) a description of each exclusion in effect under section 3132 (c) of this title during the preceding fiscal year;

(5) the number of career appointees, limited term appointees, limited emergency appointees, and noncareer appointees, in the aggregate and by agency, employed during the preceding fiscal year;

(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding fiscal year;

(7) the distribution and amount of performance awards, in the aggregate and by agency, paid during the preceding fiscal year;

(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions; and

(9) such other information regarding the Senior Executive Service as the Office considers appropriate.

(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each even-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1159.)

**§ 3136. Regulations**

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1159.)

## **CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT**

### **SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT**

**SEC.**

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- 3302. Competitive service; rules.
- 3303. Competitive service. recommendations of Senators or Representatives.
- 3304. Competitive service; examinations.
- 3304a. Competitive service; career appointment after 3 years' temporary service.
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- 3312. Preference eligibles; physical qualifications; waiver.
- 3313. Competitive service; registers of eligibles.
- 3314. Registers; preference eligibles who resigned.
- 3315. Registers; preference eligibles furloughed or separated.
- 3315a. Registers; individuals receiving compensation for work injuries.<sup>1</sup>
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- 3319. [Repealed.]
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<sup>1</sup> Section 3315a was repealed by section 22(c) of Pub. L. 93-416, Sept. 7, 1974, 88 Stat. 1150. However, item 3315a of this chapter analysis was not repealed.

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- SEC.  
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## SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

### § 3301. Civil service; generally

The President may—

- (1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;
- (2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and
- (3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 417.)

### § 3302. Competitive service; rules

The president may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and
- (2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, 7203, 7321, and 7322 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 417; amended Pub. L. 95-228, Feb. 10, 1978, 92 Stat. 25; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1217.)

### § 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418.)

### § 3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

- (1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

- (2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from ex-

amination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(c) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(2) for at least 4 years as a secretary or law clerk, or both to a justice or judge of the United States;

acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.

(d) Employees at any place outside the District of Columbia where the President or the Office of Personnel Management directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

#### **§ 3304a. Competitive service; career appointment after 3 years' temporary service**

(a) An individual serving in a position in the competitive service under an indefinite appointment or a temporary appointment pending establishment of a register (other than an individual serving under an overseas limited appointment or in GS-16, GS-17, or GS-18) acquires competitive status and is entitled to have his appointment converted to a career appointment, without condition, when—

(1) he completes, without break in service of more than 30 days, a total of at least 3 years of service in such a position;

(2) he passes a suitable noncompetitive examination;

(3) the appointing authority (A) recommends to the Office of Personnel Management that the appointment of the individual be converted to a career appointment and (B) certifies to the Office that the work performance of the individual for the past 12 months has been satisfactory; and

(4) he meets Office qualification requirements for the position and is otherwise eligible for career appointment.

(b) The employing agency shall terminate the appointment of an individual serving in a position in the competitive service under an indefinite or temporary appointment described in subsection (a) of this section, not later than 90 days after he has completed the 3-year period referred to in subsection (a)(1) of this section, if, prior to the close of such 90-day period, such individual has not met the require-

ments and conditions of subparagraphs (2) to (4), inclusive, of subsection (a) of this section.

(c) In computing years of service under subsection (a)(1) of this section for an individual who leaves a position in the competitive service to enter the armed forces and is reemployed in such a position within 120 days after separation under honorable conditions, the period from the date he leaves his position to the date he is reemployed is included.

(d) The Office of Personnel Management may prescribe regulations necessary for the administration of this section. (Added Pub. L. 90-105, § 1(a), Oct. 11, 1967, 81 Stat. 273, amended Pub. L. 91-375, § 6(c) (6), Aug. 12, 1970, 84 Stat. 776; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 3305. Competitive service; examinations; when held**

(a) The Civil Service Commission <sup>1</sup> shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

(b) The Commission <sup>2</sup> shall hold an examination for a position to which an appointment has been made within the preceding 3 years, on the application of an individual who qualifies as a preference eligible under section 2108(3) (C)-(G) of this title. The examination shall be held during the quarter following the application. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418, amended Pub. L. 90-83, § 1(8), Sept. 11, 1967, 81 Stat. 197.)

### **§ 3306. Repealed Pub. L. 95-228, Feb. 10, 1978, 92 Stat. 25**

### **§ 3307. Competitive service; maximum-age entrance requirements; exceptions**

(a) Except as provided in subsections (b), (c), and (d) of this section, appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

(b) The Secretary of Transportation may, with the concurrence of such agent as the President may designate, determine and fix the maximum limit of age within which an original appointment to a position as an air traffic controller may be made.

(c) The Secretary of the Interior may determine and fix the minimum and maximum limits of age within which original appointments to the United States Park Police may be made.

(d) The head of any agency may, with the concurrence of such agent as the President may designate, determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331 (20) and (21), respectively, of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419, amended Pub. L. 92-297, § 2(a), May 16, 1972, 86 Stat. 141; Pub. L. 93-350, § 1, July 12, 1974, 88 Stat. 355.)

### **§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions**

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an exami-

<sup>1</sup> Should be "Office of Personnel Management."

<sup>2</sup> Should be "Office."

nation for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public records. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 3309. Preference eligibles; examinations; additional points for

A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

- (1) a preference eligible under section 2108(3) (C)-(G) of this title—10 points; and
- (2) a preference eligible under section 2108(3)(A) of this title—5 points.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419, amended Pub. L. 90-83, § 1(8), Sept. 11, 1967, 81 Stat. 197.)

### § 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

### § 3311. Preference eligibles; examinations; crediting experience

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

- (1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and
- (2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

### § 3312. Preference eligibles; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Office of Personnel Management or other examining agency shall waive—

- (1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and
- (2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent

or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1148 and 1224.)

### **§ 3313. Competitive service; registers of eligibles**

The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

- (1) for scientific and professional positions in GS-9 or higher, in order of their ratings, including points added under section 3309 of this title; and
- (2) for all other positions—
  - (A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title; and
  - (B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

The names of preference eligibles shall be entered ahead of others having the same rating. (Pub. L. 89-554, Sept. 6, 1966; 80 Stat. 420.)

### **§ 3314. Registers; preference eligibles who resigned**

A preference eligible who resigns, on request to the Office of Personnel Management, is entitled to have his name placed again on all registers for which he may have been qualified, in the order named by section 3313 of this title. (Pub. L. 80-554, Sept. 6, 1966, 80 Stat. 420; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 3315. Registers; preference eligibles furloughed or separated**

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order named by section 3313 of this title. This subsection applies to registers and employment lists maintained by the Civil Service Commission,<sup>1</sup> an Executive agency, or the government of the District of Columbia.

(b) The Commission<sup>2</sup> may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this

<sup>1</sup> Should be "Office of Personnel Management."  
<sup>2</sup> Should be "office."

title to be entitled to the benefits of subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

**§ 3315a. Repealed. Pub. L. 93-416, § 22(c), Sept. 7, 1974, 88 Stat. 1150**

**§ 3316. Preference eligibles; reinstatement**

On request of an appointing authority, a preference eligible who has resigned or who has been dismissed or furloughed may be certified for, and appointed to, a position for which he is eligible in the competitive service, an Executive agency, or the government of the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421.)

**§ 3317. Competitive service; certification from registers**

(a) The Civil Service Commission <sup>1</sup> shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 3318. Competitive service; selection from certificates**

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b) (1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days

<sup>1</sup> Should be "Office of Personnel Management".

of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

- (A) the reasons submitted by the appointing authority in support of the proposed passover, and
- (B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

(c) When three or more names of preference eligibles are on a re-employment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3) (C)-(G) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420, amended Pub. L. 90-83, § 1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, § 307(d), Oct. 13, 1978, 92 Stat. 1148 and 1224.)

**§ 3319. Repealed. Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1149**

**§ 3320. Excepted service; government of the District of Columbia; selection**

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422.)

**§ 3321. Competitive service; probationary period**

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

- (1) before an appointment in the competitive service becomes final; and
- (2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

- (1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and
- (2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1146.)

**§ 3322. Repealed. Pub. L. 95-256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191**

**§ 3323. Automatic separations; reappointment; reemployment of annuitants**

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(c) Notwithstanding subsection (a) of this section, a Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422.)

**§ 3324. Appointments at GS-16, 17 and 18**

(a) An appointment to a position in GS-16, 17, or 18 may be made only on approval of the qualifications of the proposed appointee by the Office of Personnel Management. This section does not apply to a position—

- (1) provided for in section 5108(c)(2) of this title;
- (2) to which appointment is made by the President;
- (3) to which appointment is made by the Librarian of Congress; or
- (4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading "The White House Office", "Special Projects", "Council of Economic Advisers", "National

Security Council", or "Office of Emergency Planning"; or  
(B) funds appropriated to the President under the heading "Emergency Fund for the President" by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, amended Pub. L. 90-83, § 1(10), Sept. 11, 1967, 81 Stat. 197; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 3325. Appointments to scientific and professional positions

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Office of Personnel Management or its designee for this purpose.

(b) This section does not apply to positions established under section 3104(a)(7) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 3326. Appointments of retired members of the armed forces to positions in the Department of Defense

(a) For the purpose of this section, "member" and "Secretary concerned" have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if—

(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Civil Service Commission<sup>1</sup>;

(2) the minimum rate of basic pay for the position has been increased under section 5303 of this title; or

(3) a state of national emergency exists.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—

(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;

(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;

(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and

(4) the position has not been held open pending the retirement of the retired member.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423.)

<sup>1</sup> Should be "Office of Personnel Management."

**§ 3327. Civil service employment information**

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examination conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

(2) the period during which applications will be accepted.

As used in this subsection, "agency" means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service. (Added, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1151.)

## SUBCHAPTER II—OATH OF OFFICE

### **§ 3331. Oath of office**

An individual except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

### **§ 3332. Officer affidavit; no consideration paid for appointment**

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424).

### **§ 3333. Employee affidavit; loyalty and striking against the Government**

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is *prima facie* evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

### SUBCHAPTER III—DETAILS

#### § 3341. Details; within Executive or military departments

(a) The head of an Executive department or military department may detail employees among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

(b) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425.)

#### § 3342. Repealed. Pub. L. 89-762; § 1(a), Nov. 5, 1966, 80 Stat. 1312.

#### § 3343. Details; to international organizations

(a) For the purpose of this section—

(1) “agency”, “employee”, and “international organization” have the meanings given them by section 3581 of this title; and

(2) “detail” means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the

detail, without regard to section 209 of title 18. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425, amended Pub. L. 91-175, § 502(a), Dec. 30, 1969, 83 stat. 825.)

#### **§ 3344. Details; administrative law judges**

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with administrative law judges appointed under section 3105 of this title may use administrative law judges selected by the Office of Personnel Management from and with the consent of other agencies. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425, amended, Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183 and 1224.)

#### **§ 3345. Details; to office of head of Executive or military department**

When the head of an Executive department or military department dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425.)

#### **§ 3346. Details; to subordinate offices**

When an officer of a bureau of an Executive department or military department, whose appointment is not vested in the head of the department, dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

#### **§ 3347. Details; Presidential authority**

Instead of a detail under section 3345 or 3346 of this title, the President may direct the head of another Executive department or military department or another officer of an Executive department or military department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the office until a successor is appointed or the absence or sickness stops. This section does not apply to a vacancy in the office of Attorney General. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

#### **§ 3348. Details; limited in time**

A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than 30 days. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

#### **§ 3349. Details; to fill vacancies; restrictions**

A temporary appointment, designation, or assignment of one officer to perform the duties of another under section 3345 or 3346 of this title may not be made otherwise than as provided by those sections, except to fill a vacancy occurring during a recess of the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

## SUBCHAPTER IV—TRANSFERS

### § 3351. Preference eligibles; transfer; physical qualifications; waiver

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate. (Pub. L. 89-554, Sep. 6, 1966, 80 Stat. 426, amended Pub. L. 94-183, § 2(4), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## SUBCHAPTER V—PROMOTION

### **§ 3361. Promotion; competitive service; examination**

An individual may be promoted in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This section does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

### **§ 3362. Promotion; effect of incentive award**

An agency, in qualifying and selecting an employee for promotion, shall give due weight to an incentive award under chapter 45 of this title. For the purpose of this section, "agency" and "employee" have the meanings given them by section 4501 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426.)

### **§ 3363. Preference eligibles; promotion; physical qualifications; waiver**

In determining qualifications of a preference eligible for promotion to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 427, amended Pub. L. 94-183, § 2(5), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 3364. Repealed. Pub. L. 94-183; § 2(6), Dec. 31, 1975, 89 Stat. 1057.**

**SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES****§ 3371. Definitions**

For the purpose of this subchapter—

(1) “State” means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) “local government” means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act;

(3) “Federal agency” means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) “other organization” means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials; or

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management.

(Added Pub. L. 91-648, § 402(a), Jan. 5, 1971, 84 Stat. 1920; amended Pub. L. 93-638, § 105(a), Jan. 4, 1975, 88 Stat. 2208; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1189.)

### § 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency; for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an <sup>1</sup> other organization to a Federal agency.

(c) (1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States. (Added, Pub. L. 91-468, § 402(a), Jan. 5, 1971, 84 Stat. 1921; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1190.)

### § 3373. Assignment of employees to State and local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or  
(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and

<sup>1</sup> Should be "any."

any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d) (1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual. (Added Pub. L. 91-648, § 402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1190 and 1224.)

#### **§ 3374. Assignments of employees from State or local governments**

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, section 638a of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance,

and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned. (Added Pub. L. 91-648, § 402 (a), Jan. 5, 1971, 84 Stat. 1923; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1190.)

### § 3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

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(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter. (Added Pub. L. 91-648, § 402(a), Jan. 5, 1971, 84 Stat. 1924; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1190.)

**§ 3376. Regulations**

The President may prescribe regulations for the administration of this subchapter. (Added Pub. L. 91-648, § 402(a), Jan. 5, 1971, 84 Stat. 1925.)

## SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

### § 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary of Transportation has determined—

- (1) he is medically disqualified for duties as a controller;
- (2) he is unable to maintain technical proficiency as a controller; or
- (3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

- (1) retained at his last assigned grade and rate of basic pay as a controller;
- (2) entitled to each increase in rate of basic pay provided under law; and
- (3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

- (1) assigned to other duties in the Department of Transportation;
- (2) released for transfer to another Executive agency; or
- (3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 529 of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105(a), 4107 (a) and (b), and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law. (Added Pub. L. 92-297, § 3(a), May 16, 1972, 86 Stat. 142.)

### § 3382. Involuntary separation for retirement

An air traffic controller who is eligible for immediate retirement under section 8336 of this title may be separated involuntarily from

the service if the Secretary of Transportation determines that the separation of the controller is necessary in the interest of—

- (1) aviation safety;
- (2) the efficient control of air traffic; or
- (3) the preservation of the physical or mental health of the controller.

Chapter 75 of this title does not apply to a determination or action under this section. Separation under this section shall not become final, without the consent of the controller, until the last day of the second month following the day the controller receives a notification of the determination by the Secretary under this section, or, if a review is requested under section 3383 of this title, the last day of the month in which a final decision is issued by a board of review under section 3383(c) of this title, whichever is later. A controller who is to be separated under this section is entitled to training under section 3381 of this title. Separation of such a controller who elects to receive training under section 3381 shall not become final until the last day of the month following the completion of his training. (Added Pub. L. 92-297, § 3(a), May 16, 1972, 86 Stat. 142.)

#### § 3383. Determinations; review procedures

(a) An air traffic controller subject to a determination by the Secretary of Transportation under section 3381(a) or section 3382 of this title, shall be furnished a written notice of the determination and the reasons therefor, and a notification that the controller has 15 days after the receipt of the notification within which to file a written request for reconsideration of the determination. Unless the controller files such a request within the 15 days, or unless the determination is rescinded by the Secretary within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—

- (1) a person designated by the controller;
- (2) a representative of the Department of Transportation designated by the Secretary; and
- (3) a representative of the Merit Systems Protection Board, designated by the Chairman, who shall serve as chairman of the board of review.

(c) The board of review shall review evidence supporting and inconsistent with the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.

(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller within

the Department of Transportation. (Added Pub. L. 92-297 § 3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1225.)

#### **§ 3384. Regulations**

The Secretary of Transportation is authorized to issue regulations to carry out the provisions of this subchapter. (Added Pub. L. 92-297, § 3, May 16, 1972, 86 Stat. 143.)

#### **§ 3385. Effect on other authority**

This subchapter shall not limit the authority of the Secretary of Transportation to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of the safe or efficient separation and control of air traffic or the physical or mental health of a controller; or to reassign permanently or separate a controller under any other provision of law. (Added Pub. L. 92-297, § 3 (a), May 16, 1972, 86 Stat. 143.)

## SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

### § 3391. Definitions

For the purpose of this subchapter, "agency", "Senior Executive Service position", "senior executive", "career appointee", "limited term appointee", "limited emergency appointee", "noncareer appointee", and "general position" have the meanings set forth in section 3132(a) of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1161.)

### § 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(1) to the extent provided under regulations prescribed by the Office, and

(2) so long as the appointee continues to serve under such Presidential appointment.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1161.)

**§ 3393. Career appointments**

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service;  
or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c) (1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1161.)

**§ 3394. Noncareer and limited appointments**

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1162.)

### § 3395. Reassignment and transfer within the Senior Executive Service

#### (a) (1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

(2) A career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives a written notice of the reassignment at least 15 days in advance of such reassignment.

(b) (1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointments in excess of 3 years.

(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

#### (d) A noncareer appointee in an agency—

(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

(e) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to reassign the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1163.)

### § 3396. Development for and within the Senior Executive Service

(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1163.)

(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

(c) (1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

(2) A sabbatical under this subsection may not be granted to any career appointee—

(A) more than once in any 10-year period;

(B) unless the appointee has completed 7 years of service—

(i) in one or more positions in the Senior Executive Service;

(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

(3) (A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1163.)

### § 3397. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1164.)

## CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

### SEC.

- 3401. Definitions.
- 3402. Establishment of part-time career employment programs.
- 3403. Limitations.
- 3404. Personnel ceilings.
- 3405. Nonapplicability.
- 3406. Regulations.
- 3407. Reports.
- 3408. Employee organization representation.

### § 3401. Definitions

For the purpose of this chapter—

- (1) “agency” means—
  - (A) an Executive agency;
  - (B) a military department;
  - (C) an agency in the judicial branch;
  - (D) the Library of Congress;
  - (E) the Botanic Garden; and
  - (F) the Office of the Architect of the Capitol; but does not include—
    - (i) a Government controlled corporation;
    - (ii) the Tennessee Valley Authority;
    - (iii) the Alaska Railroad;
    - (iv) the Virgin Island Corporation;
    - (v) the Panama Canal Company;
    - (vi) the Federal Bureau of Investigation, Department of Justice;
    - (vii) the Central Intelligence Agency; and
    - (viii) the National Security Agency, Department of Defense; and

- (2) “part-time career employment” means part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 3402. Establishment of part-time career employment programs

- (a) (1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

- (A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis

(including the establishment of criteria to be used in identifying such positions);

(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3403 of this title;

(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

(E) procedures for notifying the public of vacant part-time positions in such agency, utilizing facilities and funds otherwise available to such agency for the dissemination of information.

(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

(b) (1) The Office of Personnel Management, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this chapter.

(2) The Office shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

(Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 3403. Limitations

(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment. (Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

### § 3404. Personnel ceilings

In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time

career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek. This section shall become effective on October 1, 1980. (Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

### **§ 3405. Nonapplicability**

(a) If, on the date of enactment of this chapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this chapter shall not apply to those positions.

(b) This chapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate fixed for GS-16 of the General Schedule. (Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

### **§ 3406. Regulations**

Before any regulation is prescribed under this chapter, a copy of the proposed regulation shall be published in the Federal Register and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this chapter. (Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

### **§ 3407. Reports**

(a) Each agency shall prepare and transmit on a biannual basis a report to the Office of Personnel Management on its activities under this subchapter<sup>1</sup> including—

(1) details on such agency's progress in meeting part-time career employment goals established under section 3402 of this title; and

(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this chapter, together with a statement of the measures taken to overcome such impediments.

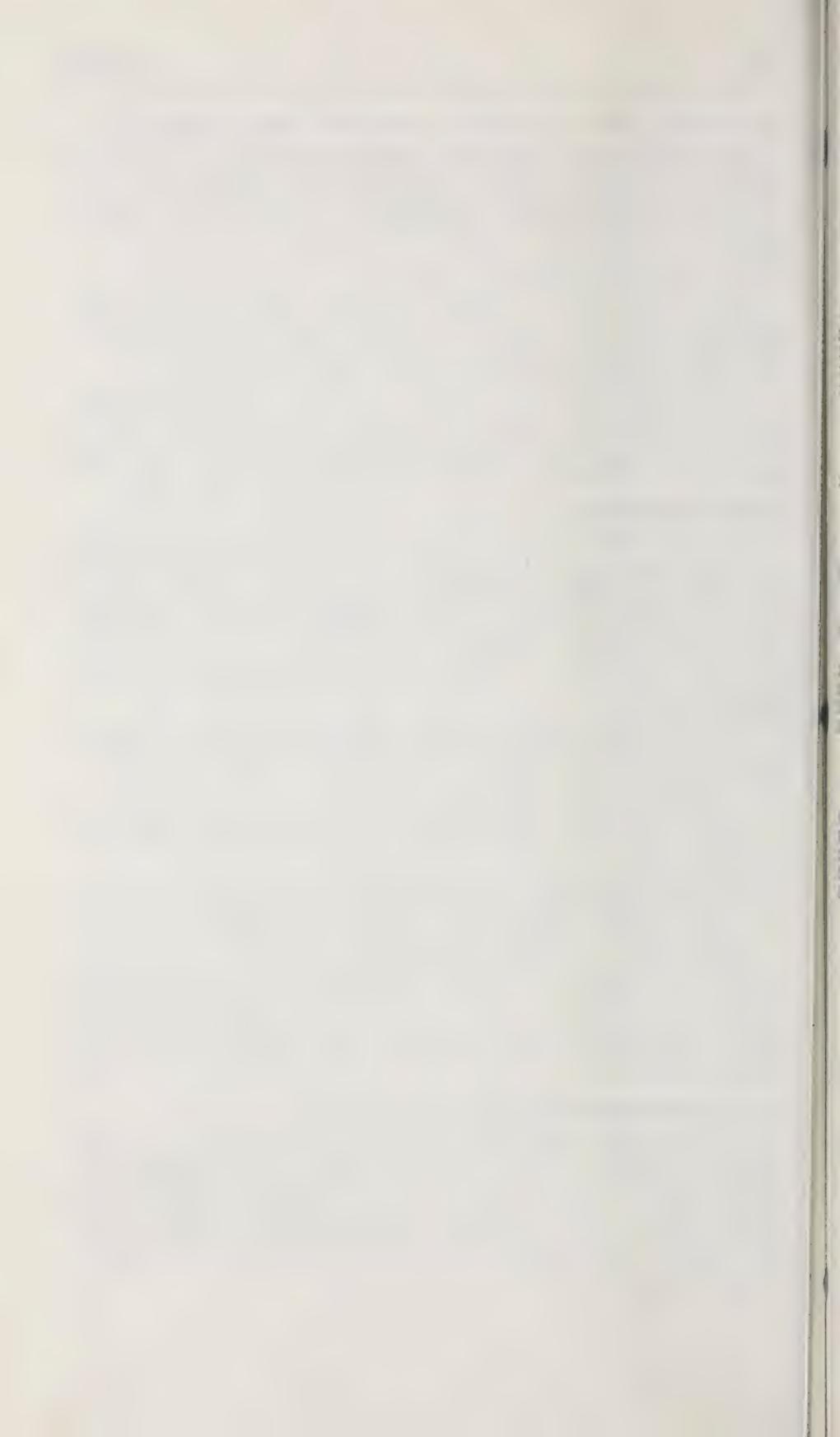
(b) The Office shall include in its annual report under section 1308 of this title a statement of its activities under this chapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this chapter. (Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

### **§ 3408. Employee organization representation**

If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis. (Added Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1056; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

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<sup>1</sup> Should be "chapter."



## **CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT**

### **SUBCHAPTER I—RETENTION PREFERENCE**

SEC.

- 3501. Definitions; application.
- 3502. Order of retention.
- 3503. Transfer of functions.
- 3504. Preference eligible; retention; physical qualifications; waiver.

### **SUBCHAPTER II—RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY**

- 3551. Restoration; Reserves and National Guardsmen.

### **SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY**

- 3571. Reinstatement or restoration; individual suspended or removed for national security.

### **SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTER- NATIONAL ORGANIZATION**

- 3581. Definitions.
- 3582. Rights of transferring employees.
- 3583. Computations.
- 3584. Regulations.

### **SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE**

- 3591. Definitions.
- 3592. Removal from the Senior Executive Service.
- 3593. Reinstatement in the Senior Executive Service.
- 3594. Guaranteed placement in other personnel systems.
- 3595. Regulations.

## SUBCHAPTER I—RETENTION PREFERENCE

### § 3501. Definitions; application

- (a) For the purpose of this subchapter, except section 3504—  
(1) “active service” has the meaning given it by section 101 of title 37;  
(2) “a retired member of a uniformed service” means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and  
(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—  
(A) his retirement was based on disability—  
(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or  
(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 301 of title 38;  
(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or  
(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428, amended Pub. L. 94-183, § 2(8), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1165.)

### § 3502. Order of retention

- (a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which gives due effect to—  
(1) tenure of employment;  
(2) military preference subject to section 3501(a)(3) of this title;  
(3) length of service; and  
(4) efficiency or performance ratings.

In computing length of service, a competing employee—

- (A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;
- (B) who is a retired member of a uniformed service is entitled to credit for—
- (i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or
  - (ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3) (A), (B), or (C) of this title; and
- (C) who is an employee in or under the Department of Agriculture is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.
- (b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.
- (c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 428, amended Pub. L. 90-367, § 3, June 29, 1968, 82 Stat. 278; Pub. L. 90-623, § 1(23), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1149 and 1224.)

### § 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1149 and 1224.)

### § 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

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(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1149 and 1224.)

## SUBCHAPTER II—RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY

### § 3551. Restoration; Reserves and National Guardsmen

An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who is ordered to active duty or to duty under sections 502–505 of title 32 as a Reserve of the armed forces or member of the National Guard is entitled, on release from duty within the time limits specified in section 9(g) of the Military Selective Service Act of 1967 (50 U.S.C. App. 459(g)), to be restored to the position held by him when ordered to duty. However, a Reserve or member of the National Guard who leaves a position for which the salary is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives is entitled on release from active duty to be restored only under the provisions of section 459 of title 50, appendix, United States Code. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429, amended Pub. L. 90-491, § 2, Aug. 17, 1968, 82 Stat. 791.)

SUBCHAPTER III—REINSTATEMENT OR RESTORATION  
AFTER SUSPENSION OR REMOVAL FOR NATIONAL  
SECURITY

**§ 3571. Reinstatement or restoration; individuals suspended or removed for national security**

An individual suspended or removed under section 7532 of this title may be restored to duty in the discretion of the head of the agency concerned. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429.)

## SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

### § 3581. Definitions

For the purpose of this subchapter—

(1) “agency” means—

- (A) an Executive agency;
- (B) a military department; and
- (C) an employing authority in the legislative branch;

(2) “employee” means an employee in or under an agency;

(3) “international organization” means a public international organization or international-organization preparatory commission in which the Government of the United States participates;

(4) “transfer” means the change of position by an employee from an agency to an international organization; and

(5) “reemployment” means—

(A) the reemployment of an employee under section 3582

(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or, in the absence of a named period, not extending beyond the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429, amended Pub. L. 91-175, § 502(b), Dec. 30, 1969, 83 Stat. 825; Pub. L. 94-183, § 2(9), Dec. 31, 1975, 89 Stat. 1057.)

### § 3582. Rights of transferring employees

(a) An employee serving under an appointment not limited to 1 year or less who transfers to an international organization with the consent of the head of his agency is entitled—

(1) to retain coverage, rights, and benefits under any system established by law for the retirement of employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the system's fund or depository; and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under the system, except that such service shall not be considered creditable service for the purpose of any retirement system for transferring personnel, if such service forms the basis, in whole or in part, for an annuity or pension under the retirement system of the international organization;

(2) to retain coverage, rights, and benefits under chapters 87 and 89 of this title, if necessary employee deductions and agency

contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the Employees' Life Insurance Fund and the Employees' Health Benefits Fund, as applicable, and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapters 87 and 89 of this title;

(3) to retain coverage, rights, and benefits under subchapter I of chapter 81 of this title, and for this purpose his employment with the international organization is deemed employment by the United States, but if he or his dependents receive from the international organization a payment, allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the international organization or other benefit of any kind on account of the same injury or death, the amount thereof is credited against disability or death compensation, as the case may be, payable under subchapter I of chapter 81 of this title; and

(4) to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled.

(b) An employee entitled to the benefits of subsection (a) of this section is entitled to be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if—

(1) he is separated from the international organization within 5 years, or any extension thereof, after entering on duty with the international organization or within such shorter period as may be named by the head of the agency at the time of consent to transfer; and

(2) he applies for reemployment not later than 90 days after the separation.

On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the civil service. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. The period of separation caused by his employment with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organiza-

tion under section 3343 of this title. Such a payment shall be made to an employee who is unable to exercise his reemployment right because of disability incurred while on transfer to an international organization under this subchapter and, in the case of any employee who dies while on such a transfer or during the period after separation from the international organization in which he is properly exercising or could exercise his reemployment right, in accordance with subchapter VIII of chapter 55 of this title. This subsection does not apply to a congressional employee nor may any payment provided for in the preceding two sentences of this subsection be based on a period of employment with an international organization occurring before the first day of the first pay period which begins after December 29, 1969.

(c) This section applies only with respect to so much of a period of employment with an international organization as does not exceed 5 years, or any extension thereof, or such shorter period named by the head of the agency at the time of consent to transfer, except that for retirement and insurance purposes this section continues to apply during the period after separation from the international organization in which—

(1) an employee, except a Congressional employee, is properly exercising or could exercise the reemployment right established by subsection (b) of this section; or

(2) a Congressional employee is effecting or could effect a reemployment.

During that reemployment period, the employee is deemed on leave without pay for retirement and insurance purposes.

(d) During the employee's period of service with the international organization, the agency from which the employee is transferred shall make contributions for retirement and insurance purposes from the appropriations or funds of that agency so long as contributions are made by the employee. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 430, amended Pub. L. 91-175, § 502, Dec. 30, 1969, 83 Stat. 825; Pub. L. 94-183, § 2(10), Dec. 31, 1975, 89 Stat. 1057.)

### **§ 3583. Computations**

A computation under this subchapter before reemployment is made in the same manner as if the employee had received basic pay, or basic pay plus additional pay in the case of a Congressional employee, at the rate at which it would have been payable had the employee continued in the position in which he was serving at the time of transfer. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 431.)

### **§ 3584. Regulations**

The President may prescribe regulations necessary to carry out this subchapter and section 3343 of this title and to protect and assure the retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate. The regulations may provide for the exclusion of employees from the application of this subchapter and section 3343 of this title on the basis of the nature and type of employment including excepted appointments of a confidential or policy-determining character, or conditions pertaining to the employment including short-term appointments, seasonal or intermittent employment, and part-time employment. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 431.)

## SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

### § 3591. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “senior executive”, “career appointee”, “limited term appointee”, “limited emergency appointee”, “noncareer appointee”, and “general position” have the meanings set forth in section 3132(a) of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1155.)

### § 3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

- (1) during the 1-year period of probation under section 3393(d) of this title, or
- (2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

(b) (1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

- (A) within 120 days after an appointment of the head of the agency; or
- (B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—
  - (i) is a noncareer appointee; and
  - (ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

- (A) any removal under section 4314(b)(3) of this title; or
- (B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1166.)

**§ 3593. Reinstatement in the Senior Executive Service**

(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1166.)

**§ 3594. Guaranteed placement in other personnel systems**

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee—

(1) who has completed the probationary period under section 3393(d) of this title; and

(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c) (1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1) (B) (ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1) (B) (i) of this subsection for the position in which the employee is placed. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1167.)

### **§ 3595. Regulations**

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1167.)

## Subpart C—Employee Performance

### CHAPTER 41—TRAINING

**SEC.**

- 4101. Definitions.
- 4102. Exceptions ; Presidential authority.
- 4103. Establishment of training programs.
- 4104. Government facilities ; use of.
- 4105. Non-Government facilities ; use of.
- 4106. Non-Government facilities ; amount of training limited.
- 4107. Non-Government facilities ; restrictions.
- 4108. Employee agreements ; service after training.
- 4109. Expenses of training.
- 4110. Expenses of attendance at meetings.
- 4111. Acceptance of contributions, awards, and other payments.
- 4112. Absorption of costs within funds available.
- 4113. Agency review of training needs ; annual program reports.
- 4114. Non-Government facilities ; review of training programs.
- 4115. Collection of training information.
- 4116. Training program assistance.
- 4117. Administration.
- 4118. Regulations.

**§ 4101. Definitions**

For the purpose of this chapter—

- (1) “agency”, subject to section 4102 of this title, means—
  - (A) an Executive department;
  - (B) an independent establishment;
  - (C) a Government corporation subject to sections 846–852 or 856–859 of title 31;
  - (D) the Library of Congress;
  - (E) the Government Printing Office ; and
  - (F) the government of the District of Columbia;
- (2) “employee”, subject to section 4102 of this title, means—
  - (A) an individual employed in or under an agency ; and
  - (B) a commissioned officer of the Environmental Science Services Administration ;
- (3) “Government” means the Government of the United States and the government of the District of Columbia ;
- (4) “training” means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which are or will be directly related to the performance by the employee of official duties for the Government, in order to increase the knowledge, proficiency, ability, skill, and qualifications of the employee in the performance of official duties ;
- (5) “Government facility” means property owned or substantially controlled by the Government and the services of any civilian and military personnel of the Government ; and

(6) "non-Government facility" means—

(A) the government of a State or of a territory or possession of the United States including the Commonwealth of Puerto Rico, and an interstate governmental organization, or a unit, subdivision, or instrumentality of any of the foregoing;

(B) a foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this chapter;

(C) a medical, scientific, technical, educational, research, or professional institution, foundation, or organization;

(D) a business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization;

(E) individuals other than civilian or military personnel of the Government; and

(F) the services and property of any of the foregoing furnishing the training.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 432, amended Pub. L. 90-206, § 224(a), Dec. 16, 1967, 81 Stat. 642.)

## § 4102. Exceptions; Presidential authority

(a) (1) This chapter does not apply to—

(A) a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(B) the Tennessee Valley Authority; or

(C) an individual (except a commissioned officer of the Environmental Science Services Administration) who is a member of a uniformed service during a period in which he is entitled to pay under section 204 of title 37.

(2) This chapter (except sections 4110 and 4111) does not apply to—

(A) the Foreign Service of the United States; or

(B) an individual appointed by the President, unless the individual is specifically designated by the President for training under this chapter.

(b) The President, at any time in the public interest, may—

(1) except an agency or part thereof, or an employee or group or class of employees therein, from this chapter or a provision thereof (except this section); and

(2) withdraw an exception made under this subsection.

However, the President may not except the Office of Personnel Management from a provision of this chapter which vests in or imposes on the Office a function, duty, or responsibility concerning any matter except the establishment, operation, and maintenance, in the same capacity as other agencies, of training programs and plans for its employees. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 433, amended Pub. L. 90-83, § 1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 94-183, § 2(11), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## § 4103. Establishment of training programs

(a) In order to increase economy and efficiency in the operations of the agency and to raise the standards of performance by employees of

their official duties to the maximum possible level of proficiency, the head of each agency, in conformity with this chapter, shall establish, operate, and maintain a program or programs, and a plan or plans thereunder, for the training of employees in or under the agency by, in, and through Government facilities and non-Government facilities. Each program, and plan thereunder, shall—

- (1) conform to the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title;
- (2) provide for adequate administrative control by appropriate authority; and
- (3) provide for the encouragement of self-training by employees by means of appropriate recognition of resultant increases in proficiency, skill, and capacity.

Two or more agencies jointly may operate under a training program.

(b) (1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.

(2) Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.

(3) In selecting an employee for training under this subsection, the head of the agency shall consider—

- (A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;
- (B) the employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and
- (C) the benefits to the Government which would result from retaining the employee in the Federal service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 483; amended, Pub. L. 95-454, 92 Stat. 1146, Oct. 13, 1978.)

#### **§ 4104. Government facilities; use of**

An agency program for the training of employees by, in, and through Government facilities under this chapter shall—

- (1) provide for training, insofar as practicable, by, in, and through Government facilities under the jurisdiction or control of the agency; and
- (2) provide for the making by the agency, to the extent necessary and appropriate, of agreements with other agencies in any branch of the Government, on a reimbursable basis when requested by the other agencies, for—

- (A) use of Government facilities under the jurisdiction or control of the other agencies in any branch of the Government; and
- (B) extension to employees of the agency of training programs of other agencies.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 484.)

**§ 4105. Non-Government facilities; use of**

(a) The head of an agency, without regard to section 5 of title 41, may make agreements or other arrangements for the training of employees of the agency by, in, or through non-Government facilities under this chapter.

(b) An agency program for the training of employees by, in, and through non-Government facilities under this chapter shall—

(1) provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and

(2) give consideration to the needs and requirements of the agency in recruiting and retaining scientific, professional, technical, and administrative employees.

(c) In order to protect the Government concerning payment and reimbursement of training expenses, each agency shall prescribe such regulations as it considers necessary to implement the regulations prescribed under section 4118(a)(8) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 434.)

**§ 4106. Non-Government facilities; amount of training limited**

(a) The training of employees by, in, and through non-Government facilities under this chapter is subject to the following limitations:

(1) The number of man-years of training for an agency in a fiscal year may not exceed 1 percent of the total number of man-years of civilian employment for the agency in the same fiscal year as disclosed by the agency budget estimates for the year.

(2) An employee having less than 1 year of current, continuous civilian service is not eligible for training unless the head of his agency determines, under regulations prescribed under section 4118 of this title, that training for the employee is in the public interest.

(3) The time spent by an employee in training may not exceed 1 year in the first 10-year period and in each subsequent 10-year period of his continuous or non-continuous civilian service in the Government.

The Office of Personnel Management may prescribe other limitations, in accordance with the provisions and purposes of this chapter, concerning the time which may be spent by an employee in training.

(b) On recommendation of the head of an agency, the Office may waive, with respect to that agency or part thereof or one or more employees therein, all or any of the limitations covered by subsection (a) of this section, if the Office determines that the application of all or any of the limitations thereto is contrary to the public interest. The Office, in the public interest, may reimpose all or any of the limitations so waived. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 434; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 4107. Non-Government facilities; restrictions**

(a) Appropriations or other funds available to an agency are not available for payment for training an employee—

(1) by, in, or through a non-Government facility which teaches or advocates the overthrow of the Government of the United States by force or violence; or

(2) by or through an individual concerning whom determination has been made by a proper Government administrative or investigatory authority that, on the basis of information or evidence developed in investigations and procedures authorized by law or Executive order, there exists a reasonable doubt of his loyalty to the United States.

(b) This chapter does not authorize training an employee by, in, or through a non-Government facility a substantial part of the activities of which is—

(1) carrying on propaganda, or otherwise attempting, to influence legislation; or

(2) participating or intervening, including publishing or distributing statements, in a political campaign on behalf of a candidate for public office.

(c) This chapter does not authorize the selection and assignment of an employee for training by, in, or through a non-Government facility, or the payment or reimbursement of the costs of training, for—

(1) the purpose of providing an opportunity to an employee to obtain an academic degree in order to qualify for appointment to a particular position for which the academic degree is a basic requirement; or

(2) the sole purpose of providing an opportunity to an employee to obtain one or more academic degrees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 435.)

#### **§ 4108. Employee agreements; service after training**

(a) An employee selected for training by, in, or through a non-Government facility under this chapter shall agree in writing with the Government before assignment to training that he will—

(1) continue in the service of his agency after the end of the training period for a period at least equal to three times the length of the training period unless he is involuntarily separated from the service of his agency; and

(2) pay to the Government the amount of the additional expenses incurred by the Government in connection with his training if he is voluntarily separated from the service of his agency before the end of the period for which he has agreed to continue in the service of his agency.

(b) The payment agreed to under subsection (a) (2) of this section may not be required of an employee who leaves the service of his agency to enter into the service of another agency in any branch of the Government unless the head of the agency that authorized the training notifies the employee before the effective date of his entrance into the service of the other agency that payment will be required under this section.

(c) If an employee, except an employee relieved of liability under subsection (b) of this section or section 4102(b) of this title, fails to fulfill his agreement to pay to the Government the additional expenses incurred by the Government in connection with his training, a sum equal to the amount of the additional expenses of training is recoverable by the Government from the employee or his estate by—

(1) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(2) such other method as is proved by law for the recovery of amounts owing to the Government.

The head of the agency concerned, under the regulations prescribed under section 4118 of this title, may waive in whole or in part a right of recovery under this subsection, if it is shown that the recovery would be against equity and good conscience or against the public interest. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 435.)

### § 4109. Expenses of training

(a) The head of an agency, under the regulations prescribed under section 4118(a)(8) of this title and from appropriations or other funds available to the agency, may—

(1) pay all or a part of the pay (except overtime, holiday, or night differential pay) of an employee of the agency selected and assigned for training under this chapter, for the period of training; and

(2) pay, or reimburse the employee for, all or a part of the necessary expenses of the training, without regard to section 529 of title 31, including among the expenses the necessary costs of—

(A) travel and per diem instead of subsistence under subchapter I of chapter 57 of this title or, in the case of commissioned officers of the Environmental Science Services Administration, sections 404 and 405 of title 37, and the Joint Travel Regulations for the Uniformed Services;

(B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under section 5724 of this title or, in the case of commissioned officers of the Environmental Science Services Administration, sections 406 and 409 of title 37, and the Joint Travel Regulations for the Uniformed Services, when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training;

(C) tuition and matriculation fees;

(D) library and laboratory services;

(E) purchase or rental of books, materials, and supplies; and

(F) other services or facilities directly related to the training of the employee.

(b) The expenses of training do not include membership fees except to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent to undergoing the training. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 436, amended Pub. L. 90-83, § 1(4), Sept. 11, 1967, 81 Stat. 196.)

### § 4110. Expenses of attendance at meetings

Appropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 436.)

**§ 4111. Acceptance of contributions, awards, and other payments**

(a) To the extent authorized by regulation of the President, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization determined by the Secretary of the Treasury to be an organization described by section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26.

(b) When a contribution, award or payment, in cash or in kind, is made to an employee for travel, subsistence, or other expenses under subsection (a) of this section, an appropriate reduction, under regulations of the Director of the Bureau of the Budget, shall be made from payment by the Government to the employee for travel, subsistence, or other expenses incident to training in a non-Government facility or to attendance at a meeting. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 437.)

**§ 4112. Absorption of costs within funds available**

(a) The Director of the Bureau of the Budget, to the extent he considers practicable, shall provide by regulation for the absorption of the costs of the training programs and plans under this chapter by the respective agencies from applicable appropriations or funds available for each fiscal year.

(b) Subsection (a) of this section may not be held or considered to require—

(1) the separation of an individual from the service by reduction in force or other personnel action; or

(2) the placement of an individual in a leave-without-pay status.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 437).

**§ 4113. Agency review of training needs; annual program reports**

(a) The head of each agency, at least once every 3 years, shall review the needs and requirements of the agency for the training of employees under its jurisdiction. The Office of Personnel Management, on request of an agency, may assist the agency with the review. Information obtained or developed in a review shall be made available to the Office at its request.

(b) Each agency shall report annually to the Office, at such times and in such form as the Office prescribes, on its programs and plans for the training of employees under this chapter. The report shall set forth—

(1) such information concerning the expenditures of the agency in connection with training as the Office considers appropriate;

(2) the name of each employee of the agency, except a student participating in a cooperative education program, who, during the period covered by the report, received training by, in, or through a non-Government facility for more than 120 days; the

grade, title, and primary duties of the position held by the employee; the name of the non-Government facility from which the training was received; the nature, length, and cost of the training to the Government; and the relationship of the training to official duties;

(3) the name of each employee of the agency who received a contribution or award under section 4111(a) of this title during the period covered by the report;

(4) a statement concerning the value of the training to the agency;

(5) estimates of the extent to which economies and improved operation have resulted from the training; and

(6) such other information as the agency or the Office considers appropriate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 437; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 4114. Non-Government facilities; review of training programs**

The Office of Personnel Management, at the time and to the extent it considers necessary, shall review the operations, activities, and related transactions of each agency in connection with each agency program, and plan thereunder, for the training of its employees by, in, and through non-Government facilities under this chapter in order to determine whether the operations, activities, and related transactions comply with the programs and plans, the provisions and purposes of this chapter, and the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title. Each agency, on request of the Office, shall cooperate and assist in the review. If the Office finds that noncompliance exists in an agency, the Office, after consultation with the agency, shall certify to the head of the agency its recommendations for change of actions and procedures. If, after a reasonable time for placing its recommendations in effect, the Office finds that noncompliance continues to exist in the agency, the Office shall report the finding to the President for such action as he considers appropriate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 438; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 4115. Collection of training information**

The Office of Personnel Management, to the extent it considers appropriate in the public interest, may collect information concerning training programs, plans, and the methods inside and outside the Government. The Office, on request, may make the information available to an agency and to Congress. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 438; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 4116. Training program assistance**

The Office of Personnel Management, on request of an agency, shall advise and assist in the establishment, operation, and maintenance of the training programs and plans of the agency under this chapter, to the extent of its facilities and personnel available for that purpose. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 438; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 4117. Administration

The Office of Personnel Management has the responsibility and authority for effective promotion and coordination of the training programs under this chapter and training operations thereunder. The functions, duties, and responsibilities of the Office under this chapter are subject to supervision and control by the President and review by Congress. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 438; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 4118. Regulations

(a) The Office of Personnel Management, after considering the needs and requirements of each agency for training its employees and after consulting with the agencies principally concerned, shall prescribe regulations containing the principles, standards, and related requirements for the programs, and plans thereunder, for the training of employees under this chapter, including requirements for coordination of and reasonable uniformity in the agency training programs and plans. The regulations shall provide for the maintenance of necessary information concerning the general conduct of the training activities of each agency, and such other information as is necessary to enable the President and Congress to discharge effectively their respective duties and responsibilities for supervision, control, and review of these training programs. The regulations also shall cover—

- (1) requirements concerning the determination and continuing review by each agency of its training needs and requirements;
  - (2) the scope and conduct of the agency training programs and plans;
  - (3) the selection and assignment of employees of each agency for training;
  - (4) the use in each agency of the services of employees who have undergone training;
  - (5) the evaluation of the results and effects of the training programs and plans;
  - (6) the interchange of training information among the agencies;
  - (7) the submission of reports by the agencies on results and effects of training programs and plans and economies resulting therefrom, including estimates of costs of training by, in, and through non-Government facilities;
  - (8) requirements and limitations necessary with respect to payments and reimbursements in accordance with section 4109 of this title; and
  - (9) other matters considered appropriate or necessary by the Office to carry out the provisions of this chapter.
- (b) In addition to the matters set forth by subsection (a) of this section, the regulations, concerning training of employees by, in, or through non-Government facilities, shall—
- (1) prescribe general policies governing the selection of a non-Government facility to provide training;
  - (2) authorize training of employees only after the head of the agency concerned determines that adequate training for employ-

ees by, in, or through a Government facility is not reasonably available, and that consideration has been given to the existing or reasonably foreseeable availability and use of fully trained employees; and

(3) prohibit training an employee for the purpose of filling a position by promotion if there is in the agency concerned another employee, of equal ability and suitability, fully qualified to fill the position and available at, or within a reasonable distance from, the place where the duties of the position are to be performed.

(c) The Office, in accordance with this chapter, may revise, supplement, or abolish regulations prescribed under this section, and prescribe additional regulations.

(d) This section does not authorize the Office to prescribe the types and methods of intra-agency training or to regulate the details of intra-agency training programs. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 438; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## CHAPTER 43—PERFORMANCE APPRAISAL

### SUBCHAPTER I—GENERAL PROVISIONS

**SEC.**

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- 4303. Actions based on unacceptable performance.
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### SUBCHAPTER I—GENERAL PROVISIONS

**§ 4301. Definitions**

(iii) the General Accounting Office;

For the purpose of this subchapter—

(1) “agency” means—

(A) an Executive agency;

(B) the Administrative Office of the United States Courts;

and

(C) the Government Printing Office;

but does not include—

(i) a Government corporation;

(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office;

(2) “employee” means an individual employed in or under an agency, but does not include—

(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(B) an individual in the Foreign Service of the United States;

(C) a physician, dentist, nurse, or other employee in the Department of Medicine and Surgery, Veterans’ Administration whose pay is fixed under chapter 73 of title 38;

(D) an administrative law judge appointed under section 3105 of this title;

- (E) an individual in the Senior Executive Service;
- (F) an individual appointed by the President; or
- (G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; and

(3) "unacceptable performance" means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1132.)

### § 4302. Establishment of performance appraisal systems

(a) Each agency shall develop one or more performance appraisal systems which—

- (1) provide for periodic appraisals of job performance of employees;
- (2) encourage employee participation in establishing performance standards; and
- (3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

(1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;

(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

(3) evaluating each employee during the appraisal period on such standards;

(4) recognizing and rewarding employees whose performance so warrants;

(5) assisting employees in improving unacceptable performance; and

(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1132.)

### § 4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b) (1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

(A) 30 days' advance written notice of the proposed action which identifies—

(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

- (ii) the critical elements of the employee's position involved in each instance of unacceptable performance;
- (B) be represented by an attorney or other representative;
- (C) a reasonable time to answer orally and in writing; and
- (D) a written decision which—
- (i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and
- (ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.
- (2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.
- (c) The decision to retain, reduce in grade, or remove an employee—
- (1) shall be made within 30 days after the date of expiration of the notice period, and
- (2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—
- (A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and
- (B) for which the notice and other requirements of this section are complied with.
- (d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.
- (e) Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit System Protection Board under section 7701 of this title.
- (f) This section does not apply to—
- (1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,
- (2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or
- (3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

**§ 4304. Responsibilities of the Office of Personnel Management**

(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

(b) (1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1134.)

**§ 4305. Regulations**

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1134.)

## SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

### § 4311. Definitions

For the purpose of this subchapter, "agency", "senior executive", and "career appointee" have the meanings set forth in section 3132(a) of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1167.)

### § 4312. Senior Executive Service performance appraisal systems

(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

- (1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;
- (2) provide for systematic appraisals of performance of senior executives;
- (3) encourage excellence in performance by senior executives; and
- (4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

- (1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;
- (2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and
- (3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee in a higher executive level in the agency before the rating becomes final.

(c) (1) The Office shall review each agency's performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1167.)

### § 4313. Criteria for performance appraisals

Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(2) cost efficiency;

(3) timeliness of performance;

(4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(5) meeting affirmative action goals and achievement of equal employment opportunity requirements.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1168.)

### § 4314. Ratings for performance appraisals

(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

(1) one or more fully successful levels,

(2) a minimally satisfactory level, and

(3) an unsatisfactory level.

(b) Each performance appraisal system shall provide that—

(1) any appraisal and any rating under such system—

(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

(B) are conducted at least annually, subject to the limitation of subsection (c) (3) of this section;

(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making the appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a) (1) of this section may be given a performance award under section 5384 of this title;

(3) any senior executive receiving an unsatisfactory rating under subsection (a) (3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from

the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful rating shall be removed from the Senior Executive Service.

(c) (1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive's performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d) The Office shall include in each report submitted to each House of the Congress under section 3135 of this title a report of—

(1) the performance of any performance review board established under this section,

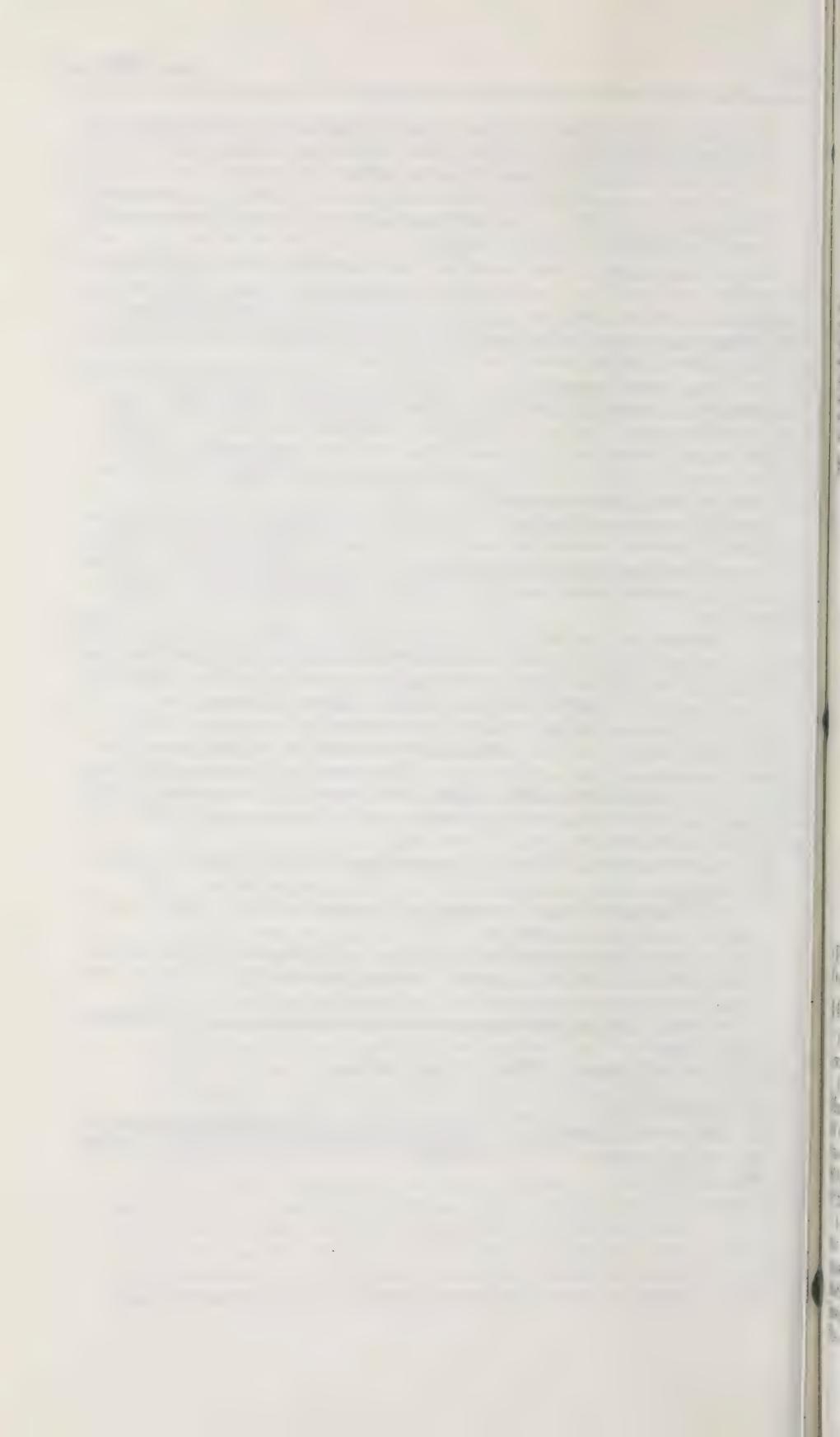
(2) the number of individuals removed from the Senior Executive Service under subchapter V of chapter 35 of this title for less than fully successful executive performance, and

(3) the number of performance awards under section 5384 of this title.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1169.)

#### **§ 4315. Regulations**

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1170.)



## CHAPTER 45—INCENTIVE AWARDS

**SEC.**

- 4501. Definitions.
- 4502. General provisions.
- 4503. Agency awards.
- 4504. Presidential awards.
- 4505. Awards to former employees.
- 4506. Regulations.
- 4507. Awarding of ranks in the Senior Executive Service.

**§ 4501. Definitions**

For the purpose of the chapter—

- (1) “agency” means—
  - (A) an Executive agency;
  - (B) the Administrative Office of the United States Courts;
  - (C) the Library of Congress;
  - (D) the Office of the Architect of the Capitol;
  - (E) the Botanic Garden;
  - (F) the Government Printing Office; and
  - (G) the government of the District of Columbia;

but does not include—

- (i) the Tennessee Valley Authority; or
- (ii) the Central Bank for Cooperatives;

- (2) “employee” means—

- (A) an employee as defined by section 2105 of this title but does not include an employee covered by the merit pay system established under section 5402 of this title; and

- (B) an individual employed by the government of the District of Columbia; and

- (3) “Government” means the Government of the United States and the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 442; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1183.)

**§ 4502. General provisions**

(a) Except as provided by subsection (b) of this section, a cash award under this chapter may not exceed \$10,000.

(b) When the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be granted with the approval of the Office.

(c) A cash award under this chapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this chapter constitutes an agreement that the use by the Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Government by the employee, his heirs, or assigns.

(d) A cash award to, and expense for the honorary recognition of, an employee may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting. The head of the agency concerned determines the amount to be paid by each activity for an agency award under section 4503 of this title. The President determines the amount to be paid by each activity for a Presidential award under section 4504 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 442; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1183.)

### § 4503. Agency awards

The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to his official employment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 443; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1180.)

### § 4504. Presidential awards

The President may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to his official employment.

A Presidential award may be in addition to an agency award under section 4503 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 443; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1180.)

### § 4505. Awards to former employees

An agency may pay or grant an award under this chapter notwithstanding the death or separation from the service of the employee concerned, if the suggestion, invention, superior accomplishment, other personal effort, or special act or service in the public interest for which the award is proposed was made or performed while the employee was in the employ of the Government. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 443.)

### § 4506. Regulations

The Office of Personnel Management shall prescribe regulations and instructions under which the agency awards program set forth by this chapter shall be carried out. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 443; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1184.)

### § 4507. Awarding of ranks in the Senior Executive Service

(a) For the purpose of this section, "agency," "senior executive," and "career appointee" have the meanings set forth in section 3132(a) of this title.

(b) Each agency shall submit annually to the Office recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual's performance over a period of years. The Office shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

(c) During any fiscal year, the President may, subject to subsection (d) of this section, award to any career appointee recommended by the Office the rank of—

- (1) Meritorious Executive, for sustained accomplishment, or
- (2) Distinguished Executive, for sustained extraordinary accomplishment.

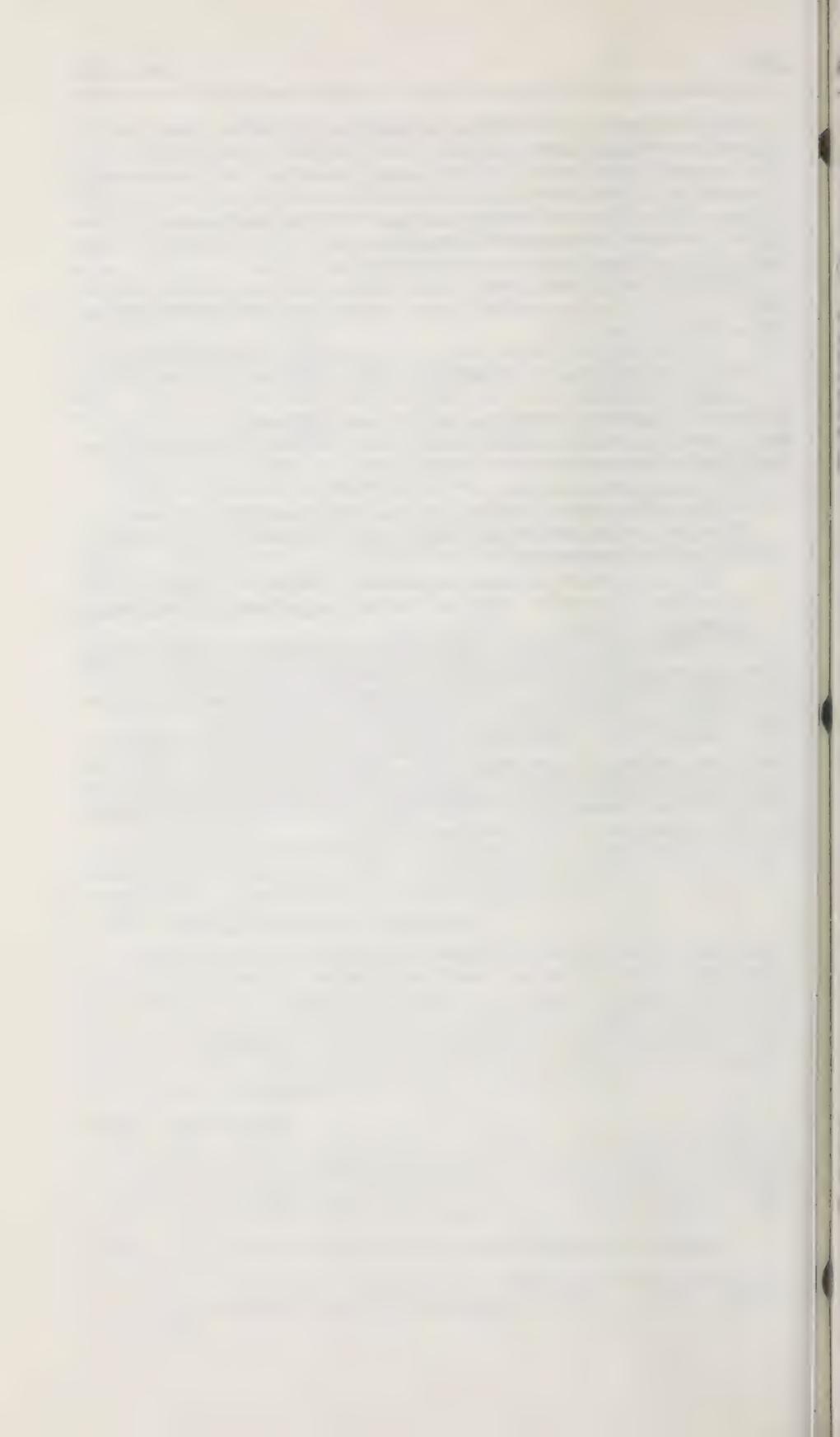
A career appointee awarded a rank under paragraph (1) or (2) of this subsection shall not be entitled to be awarded that rank during the following 4 fiscal years.

(d) During any fiscal year—

- (1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and
- (2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

(e) (1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of \$10,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of \$20,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title. (Added, Pub. L. 95-454, Oct. 13, 1978; 92 Stat. 1170.)



## CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

SEC.

- 4701. Definitions.
- 4702. Research programs.
- 4703. Demonstration projects.
- 4704. Allocations of funds.
- 4705. Reports.
- 4706. Regulations.

### § 4701. Definitions

- (a) For the purpose of this chapter—
  - (1) “agency” means an Executive agency, the Administrative Office of the United States Courts, and the Government Printing Office, but does not include—
    - (A) a Government corporation;
    - (B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or
    - (C) the General Accounting Office;
  - (2) “employee” means an individual employed in or under an agency;
  - (3) “eligible” means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;
  - (4) “demonstration project” means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and
  - (5) “research program” means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

(b) This subchapter shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425). (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1185.)

### § 4702. Research programs

The Office of Personnel Management shall—

- (1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

(2) evaluate the research programs established under paragraph (1) of this section;

(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) carry out the preceding functions directly or through agreement or contract. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1185.)

### § 4703. Demonstration projects

(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to—

(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

(2) the methods of classifying positions and compensating employees;

(3) the methods of assigning, reassigning, or promoting employees;

(4) the methods of disciplining employees;

(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

(6) the hours of work per day or per week;

(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

(8) the methods of reducing overall agency staff and grade levels.

(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

(1) develop a plan for such project which identifies—

(A) the purposes of the project;

(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

(C) the number of employees or eligibles to be included, in the aggregate and by category;

(D) the methodology;

(E) the duration;

(F) the training to be provided;

(G) the anticipated costs;

(H) the methodology and criteria for evaluation;

(I) a specific description of any aspect of the project for which there is a lack of specific authority; and

(J) a specific citation to any provision of law, rule, or

regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

(2) publish the plan in the Federal Register;  
(3) submit the plan so published to public hearing;  
(4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—

(A) to employees who are likely to be affected by the project; and

(B) to each House of the Congress;

(5) obtain approval from each agency involved of the final version of the plan; and

(6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

(c) No demonstration project under this section may provide for a waiver of—

(1) any provision of chapter 63 or subpart G of this title;

(2) (A) any provision of law referred to in section 2302(b)(1) of this title; or

(B) any provision of law implementing any provision of law referred to in section 2302(b)(1) of this title by—

(i) providing for equal employment opportunity through affirmative action; or

(ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

(4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

(5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

(d) (1) Each demonstration project shall—

(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

(2) Not more than 10 active demonstration projects may be in effect at any time.

(e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section—

(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

(g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1186.)

#### **§ 4704. Allocation of funds**

Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1188.)

#### **§ 4705. Reports**

The Office of Personnel Management shall include in the annual report required by section 1308(a) of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1188.)

#### **§ 4706. Regulations**

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1188).

## Subpart D—Pay and Allowances

### CHAPTER 51—CLASSIFICATION

SEC.

- 5101. Purpose.
- 5102. Definitions; application.
- 5103. Determination of applicability.
- 5104. Basis for grading positions.
- 5105. Standards for classification of positions.
- 5106. Basis for classifying positions.
- 5107. Classification of positions.
- 5108. Classification of positions at GS-16, 17, and 18.
- 5109. Positions classified by statute.
- 5110. Review of classification of positions.
- 5111. Revocation and restoration of authority to classify positions.
- 5112. General authority of the Office of Personnel Management.
- 5113. Classification records.
- 5114. Reports; positions in GS-16, 17, and 18.
- 5115. Regulations.

#### **§ 5101. Purpose**

It is the purpose of this chapter to provide a plan for classification of positions whereby—

(1) in determining the rate of basic pay which an employee will receive—

(A) the principle of equal pay for substantially equal work will be followed; and

(B) variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service; and

(2) individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, as defined by section 5102 of this title, and the various classes will be so described in published standards, as provided by section 5105 of this title, that the resulting position-classification system can be used in all phases of personnel administration.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 443.)

#### **§ 5102. Definitions; application**

(a) For the purpose of this chapter—

(1) "agency" means—

- (A) an Executive agency;
- (B) the Administrative Office of the United States Courts;
- (C) the Library of Congress;
- (D) the Botanic Garden;
- (E) the Government Printing Office;
- (F) the Office of the Architect of the Capitol; and

(G) the government of the District of Columbia; but does not include—

- (i) a Government controlled corporation;
- (ii) the Tennessee Valley Authority;
- (iii) The Alaska Railroad;
- (iv) the Virgin Islands Corporation;
- (v) the Atomic Energy Commission;
- (vi) the Central Intelligence Agency;
- (vii) the Panama Canal Company; or
- (viii) the National Security Agency, Department of Defense;

(2) "employee" means an individual employed in or under an agency;

(3) "position" means the work, consisting of the duties and responsibilities, assignable to an employee;

(4) "class" or "class of positions" includes all positions which are sufficiently similar, as to—

- (A) kind or subject matter of work;
- (B) level of difficulty and responsibility; and
- (C) the qualification requirements of the work;

to warrant similar treatment in personnel and pay administration; and

(5) "grade" includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to—

- (A) level of difficulty and responsibility; and
- (B) level of qualification requirements of the work;

to warrant their inclusion within one range of rates of basic pay in the General Schedule.

(b) Except as provided by subsections (c) and (d) of this section, this chapter applies to all civilian positions and employees in or under an agency, including positions in local boards and appeal boards within the Selective Service System and employees occupying those positions.

(c) This chapter does not apply to—

(1) Repealed. Pub. L. 91-375, § 6(c)(9), Aug. 12, 1970, 84 Stat. 776;

(2) employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22; and positions in or under the Department of State which are—

- (A) connected with the representation of the United States to international organizations; or
- (B) specifically exempted by statute from this chapter or other classification or pay statute;

(3) physicians, dentists, nurses, and other employees in the Department of Medicine and Surgery, Veterans' Administration, whose pay is fixed under chapter 73 of title 38;

(4) teachers, school officials, and employees of the Board of Education of the District of Columbia whose pay is fixed under chapter 15 of title 31, District of Columbia Code; the chief judges and the associate judges of the Superior Court of the Dis-

trict of Columbia and the District of Columbia Court of Appeals; and nonjudicial employees of the District of Columbia court system whose pay is fixed under title 11 of the District of Columbia Code;

(5) members of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, and the Executive Protective Service; and members of the police force of the National Zoological Park whose pay is fixed under section 5375 of this title;

(6) lighthouse keepers and civilian employees on lightships and vessels of the Coast Guard whose pay is fixed under section 432 (f) and (g) of title 14;

(7) employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement, and employees in the Bureau of Engraving and Printing whose duties are to perform or to direct manual or machine operations requiring special skill or experience, or to perform or direct the counting, examining, sorting, or other verification of the product of manual or machine operations;

(8) officers and members of crews of vessels;

(9) employees of the Government Printing Office whose pay is fixed under section 305 of title 44;

(10) civilian professors, lecturers, and instructors at the Naval War College and the Naval Academy whose pay is fixed under sections 6952 and 7478 of title 10; senior professors, professors, associate and assistant professors, and instructors at the Naval Postgraduate School whose pay is fixed under section 7044 of title 10; and the Academic Dean of the Postgraduate School of the Naval Academy whose pay is fixed under section 7043 of title 10;

(11) aliens or noncitizens of the United States who occupy positions outside the United States;

(12)(A) employees of an agency who are stationed in the Canal Zone; and

(B) on approval by the Office of Personnel Management of the request of an agency which has employees stationed in both the Republic of Panama and the Canal Zone, employees of the agency who are stationed in the Republic of Panama;

(13) employees who serve without pay or at nominal rates of pay;

(14) employees whose pay is not wholly from appropriated funds of the United States, except that with respect to the Veterans' Canteen Service, Veterans' Administration, this paragraph applies only to employees necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots whose employment is authorized by section 4202 of title 38;

(15) employees whose pay is fixed under a cooperative agreement between the United States and—

(A) a State or territory or possession of the United States, or political subdivision thereof; or

(B) an individual or organization outside the service of the Government of the United States;

(16) student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, student occupational therapists, and other student employees, assigned or attached to a hospital, clinic, or laboratory primarily for training purposes, whose pay is fixed under subchapter V of chapter 53 of this title or section 4114 of title 38;

(17) inmates, patients, or beneficiaries receiving care or treatment or living in Government agencies or institutions;

(18) experts or consultants, when employed temporarily or intermittently in accordance with section 3109 of this title;

(19) emergency or seasonal employees whose employment is of uncertain or purely temporary duration, or who are employed for brief periods at intervals;

(20) employees employed on a fee, contract, or piece work basis;

(21) employees who may lawfully perform their duties concurrently with their private profession, business, or other employment, and whose duties require only a portion of their time, when it is impracticable to ascertain or anticipate the proportion of time devoted to the service of the Government of the United States;

(22) "teachers" and "teaching positions" as defined by section 901 of title 20;

(23) examiners-in-chief and designated examiners-in-chief in the Patent Office, Department of Commerce;

(24) temporary positions in the Bureau of the Census established under section 23 of title 13, and enumerator positions in the Bureau of the Census;

(25) positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by other statute, at or in excess of the maximum rate for GS-18;

(26) civilian members of the faculty of the Coast Guard Academy whose pay is fixed under section 186 of title 14; or

(27) members of the special police force of the Library of Congress whose pay is fixed under section 167 of title 2.

(d) This chapter does not apply to an employee of the Office of the Architect of the Capitol whose pay is fixed by other statute. Subsection (c) of this section, except paragraph (7), does not apply to the Office of the Architect of the Capitol. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 444, amended Pub. L. 90-83, § 1(11), Sept. 11, 1967, 81 Stat. 197; Pub. L. 90-610, § 2, Oct. 21, 1968, 82 Stat. 1201; Pub. L. 91-34, § 2(a), June 30, 1969, 83 Stat. 41; Pub. L. 91-358, § 172(f), July 29, 1970, 84 Stat. 591; Pub. L. 91-375, § 6(c)(9), Aug. 12, 1970, 84 Stat. 776; Pub. L. 93-176, § 1, Dec. 5, 1973, 87 Stat. 693; Pub. L. 94-183, § 2(12) and (13), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221 and 1224.)

### § 5103. Determination of applicability

The Office of Personnel Management shall determine finally the applicability of section 5102 of this title to specific positions and employees, except for positions and employees in the Office of the Architect of the Capitol. (Pub. L. 98-554, Sept. 6, 1966, 80 Stat. 446; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 5104. Basis for grading positions

The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this chapter applies. The General Schedule is divided into 18 grades of difficulty and responsibility of work, as follows:

(1) Grade GS-1 includes those classes of positions the duties of which are to perform, under immediate supervision, with little or no latitude for the exercise of independent judgment—

(A) the simplest routine work in office, business, or fiscal operations; or

(B) elementary work of a subordinate technical character in a professional, scientific, or technical field.

(2) Grade GS-2 includes those classes of positions the duties of which are—

(A) to perform, under immediate supervision, with limited latitude for the exercise of independent judgment, routine work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring some training or experience; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(3) Grade GS-3 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, somewhat difficult and responsible work in office, business, or fiscal operations, or comparable, subordinate technical work of limited scope in a professional, scientific, or technical field, requiring in either case—

(i) some training or experience;

(ii) working knowledge of a special subject matter; or

(iii) to some extent the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(4) Grade GS-4 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, moderately difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) a moderate amount of training and minor supervisory or other experience;

(ii) good working knowledge of a special subject matter or a limited field of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(5) Grade GS-5 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special subject matter or of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in a limited field;

(B) to perform, under immediate supervision, and with little opportunity for the exercise of independent judgment, simple and elementary work requiring professional, scientific, or technical training; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(6) Grade GS-6 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(7) Grade GS-7 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, work of considerable difficulty and responsibility along special technical or supervisory lines in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive working knowledge of a special and complex subject matter; procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) under immediate or general supervision, to perform somewhat difficult work requiring—

(i) professional, scientific, or technical training; and

(ii) to a limited extent, the exercise of independent technical judgment; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(8) Grade GS-8 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical or supervisory lines in office, business, or fiscal administration, requiring—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive and thorough working knowledge of a specialized and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(9) Grade GS-9 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized training and considerable specialized, supervisory, or administrative experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a special and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment;

(B) with considerable latitude for the exercise of independent judgment, to perform moderately difficult and responsible work, requiring—

(i) professional, scientific, or technical training equivalent to that represented by graduation from a college or university of recognized standing; and

(ii) considerable additional professional, scientific, or technical training or experience which has demonstrated capacity for sound independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(10) Grade GS-10 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, highly difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized, supervisory, or administrative training and experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a specialized and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(11) Grade GS-11 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision and with wide latitude for the exercise of independent judgment, work of marked difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated important attainments and marked capacity for sound independent action or decision; and

(ii) intimate grasp of a specialized and complex subject matter, or of the profession, art, or science involved, or of administrative work of marked difficulty;

(B) with wide latitude for the exercise of independent judgment, to perform responsible work of considerable difficulty requiring somewhat extended professional, scientific, or technical training and experience which has demonstrated important attainments and marked capacity for independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(12) Grade GS-12 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision, with wide latitude for the exercise of independent judgment, work of a very high order of difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and attainments of a high order in specialized or administrative work; and

(ii) intimate grasp of a specialized and complex subject matter or of the profession, art, or science involved; (B) under general administrative supervision, and with wide latitude for the exercise of independent judgment, to perform professional, scientific, or technical work of marked difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and attainments of a high order in professional scientific, or technical research, practice, or administration; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(13) Grade GS-13 includes those classes of positions the duties of which are—

(A) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility along special technical, supervisory, or administrative lines, requiring extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and marked attainments;

(B) to serve as assistant head of a major organization involving work of comparable level within a bureau;

(C) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and marked attainments in professional, scientific, or technical research, practice, or administration; or

(D) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(14) Grade GS-14 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with wide latitude for the exercise of independent judgment; work of exceptional difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and unusual attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute major professional, scientific, technical, administrative, fiscal, or other specialized programs, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(15) Grade GS-15 includes those classes of positions the duties of which are—

- (A) to perform, under general administrative direction, with very wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;
- (B) to serve as head of a major organization within a bureau involving work of comparable level;
- (C) to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research practice, or administration, or in administrative, fiscal, or other specialized activities; or
- (D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(16) Grade GS-16 includes those classes of positions the duties of which are—

- (A) to perform, under general administrative direction, with unusual latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;
- (B) to serve as head of a major organization within a bureau involving work of comparable level;
- (C) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, and other specialized programs of unusual difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated leadership and exceptional attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or
- (D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(17) Grade GS-17 includes those classes of positions the duties of which are—

- (A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is of a high order among the whole group of positions of heads of bureaus;
- (B) to plan and direct or to plan and execute professional, scientific, technical, administrative, fiscal, or other specialized programs of exceptional difficulty, responsibility, and na-

tional significance, requiring extended training and experience which has demonstrated exceptional leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(18) Grade GS-18 includes those classes of positions the duties of which are—

(A) to serve as the head of a bureau where the position, considering the kind and extent of the authorities and responsibilities vested in it, and the scope, complexity, and degree of difficulty of the activities carried on, is exceptional and outstanding among the whole group of positions of heads of bureaus;

(B) to plan and direct or to plan and execute frontier or unprecedented professional, scientific, technical, administrative, fiscal, or other specialized programs of outstanding difficulty, responsibility, and national significance, requiring extended training and experience which has demonstrated outstanding leadership and attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(C) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 446.)

### § 5105. Standards for classification of positions

(a) The Office of Personnel Management, after consulting the agencies, shall prepare standards for placing positions in their proper classes and grades. The Office may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. The agencies, on request of the Office, shall furnish information for and cooperate in the preparation of the standards. In the standards, which shall be published in such form as the Office may determine, the Office shall—

- (1) define the various classes of positions in terms of duties, responsibilities, and qualification requirements;
- (2) establish the official class titles; and
- (3) set forth the grades in which the classes have been placed by the Office.

(b) The Office, after consulting the agencies to the extent considered necessary, shall revise, supplement, or abolish existing standards, or prepare new standards, so that, as nearly as may be practicable, positions existing at any given time will be covered by current published standards.

(c) The official class titles established under subsection (a)(2) of this section shall be used for personnel, budget, and fiscal purposes.

However, this requirement does not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 452; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 5106. Basis for classifying positions

(a) Each position shall be placed in its appropriate class. The basis for determining the appropriate class is the duties and responsibilities of the position and the qualifications required by the duties and responsibilities.

(b) Each class shall be placed in its appropriate grade. The basis for determining the appropriate grade is the level of difficulty, responsibility, and qualification requirements of the work of the class,

(c) Appropriated funds may not be used to pay an employee who places a supervisory position in a class and grade solely on the basis of the size of the organization unit or the number of subordinates supervised. These factors may be given effect only to the extent warranted by the work load of the organization unit and then only in combination with other factors, such as the kind, difficulty, and complexity of work supervised, the degree and scope of responsibility delegated to the supervisor, and the kind, degree, and character of the supervision exercised. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 453.)

### § 5107. Classification of positions

Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management or, if no published standards apply directly, consistently with published standards. When facts warrant, an agency may change a position which it has placed in a class or grade under this section from that class or grade to another class or grade. Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 4535; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1222 and 1224.)

### § 5108. Classification of positions at GS-16, 17, and 18

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum numbers of positions (not to exceed an aggregate of 10,777) which may at any one time be placed in—

(i) GS-16, 17, and 18; and

(ii) the Senior Executive Service, in accordance with section 3133 of this title.

A position may be placed in GS-16, 17, or 18, only by action of the Director of the Office of Personnel Management. The authority of the Director under this subsection shall be carried out by the President in the case of positions proposed to be placed in GS-16, 17, and 18 in the Federal Bureau of Investigation.

(b) (1) The number of positions of senior specialists in the Legislative Reference Service, Library of Congress, placed in GS-16, 17, and 18 under the proviso in section 166(b)(1) of title 2 are in addition to the number of positions authorized by subsection (a) of this section.

(2) In addition to the number of positions authorized by subsection (a) of this section and positions referred to in paragraph (1) of this subsection, the Librarian of Congress, subject to the procedures prescribed by this section, may place a total of 44 positions in the Library of Congress in GS-16, 17, and 18.

(c) In addition to the number of positions authorized by subsection (a) of this section—

(1) the Comptroller General of the United States, subject to the procedures prescribed by this section, may place a total of 90 positions in the General Accounting Office in GS-16, 17, and 18;

(2) the Director of the Administrative Office of the United States Courts may place a total of 4 positions in GS-17; and

(3) the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 15 positions in GS-16, 17, and 18.

(17)<sup>1</sup> the heads of executive departments or agencies in which boards of contract appeals are established pursuant to the Contract Disputes Act of 1978, and subject to the standards and procedures prescribed by this chapter, but without regard to subsection (d) of this section, may place additional positions, not to exceed seventy in number, in GS-16, GS-17, and GS-18 for the independent quasi-judicial determination of contract disputes, with the allocation of such positions among such executive departments and agencies determined by the Administrator for Federal Procurement Policy on the basis of relative case load.

(d)–(g) Repealed. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1177.)  
 (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 453, amended Pub. L. 89-632, § 1(a)–(d), Oct. 8, 1966, 80 Stat. 878; Pub. L. 90-83, § 1(12), Sept. 11, 1967, 81 Stat. 197; Pub. L. 91-187, Dec. 30, 1969, 83 Stat. 850; Pub. L. 91-206, § 5(a), Mar. 10, 1970, 84 Stat. 51; Pub. L. 91-596, § 30, Dec. 29, 1970, 84 Stat. 1619; Pub. L. 91-644, § 11, Jan. 2, 1971, 84 Stat. 1889; Pub. L. 91-656, § 9, Jan. 8, 1971, 84 Stat. 1955; Pub. L. 92-261, § 12, Mar. 24, 1972, 86 Stat. 112; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93-282, § 301, May 14, 1974, 88 Stat. 137; Pub. L. 93-406, §§ 507(b), 1051(b)(2), 4002(c), Sept. 2, 1974, 88 Stat. 894, 951, 1005; Pub. L. 93-415, § 201(g), Sept. 7, 1974, 88 Stat. 1113; Pub. L. 93-463, § 410, Oct. 23, 1974, 88 Stat. 1414; Pub. L. 93-516, § 208(b), Dec. 7, 1974, 88 Stat. 1629; Pub. L. 94-183, § 2(14) and (15), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 94-233, § 13, Mar. 15, 1976, 90 Stat. 233; Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2426; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-190, Nov. 16, 1977, 91 Stat. 1398; Pub. L. 95-219, Dec. 28, 1977, 91 Stat. 1614; Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1177; Pub. L. 95-486, Oct. 20, 1978, 92 Stat. 1634; Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2390; Pub. L. 95-612, Nov. 8, 1978, 92 Stat. 3091; Pub. L. 95-624, Nov. 9, 1978, 92 Stat. 3466; Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3681.)

## § 5109. Positions classified by statute

(a) The position held by an employee of the Department of Agriculture while he, under section 450d of title 7, is designated and vested

<sup>1</sup> Probably should be "(4)".

with a delegated regulatory function or part thereof shall be classified in accordance with this chapter, but not lower than GS-14.

(b) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1954 is classified at GS-18, and is in addition to the number of positions authorized by section 5108(a) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 455, amended Pub. L. 91-34, § 2(b), June 30, 1969, 83 Stat. 41; Pub. L. 93-406, § 1051(b)(1), Sept. 2, 1974, 88 Stat. 951; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 5110. Review of classification of positions

(a) The Office of Personnel Management, from time to time, shall review such number of positions in each agency as will enable the Office to determine whether the agency is placing positions in classes and grades in conformance with or consistently with published standards.

(b) When the Office finds under subsection (a) of this section that a position is not placed in its proper class and grade in conformance with published standards or that a position for which there is no published standard is not placed in the class and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate class and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 455; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 5111. Revocation and restoration of authority to classify positions

(a) When the Office of Personnel Management finds that an agency is not placing positions in classes and grades in conformance with or consistently with published standards, it may revoke or suspend the authority granted to the agency by section 5107 of this title and require that prior approval of the Office be secured before an action placing a position in a class and grade becomes effective for payroll and other personnel purposes. The Office may limit the revocation or suspension to—

- (1) the departmental or field service, or any part thereof;
- (2) a geographic area;
- (3) an organization unit or group of organization units;
- (4) certain types of classification actions;
- (5) classes in particular occupational groups or grades; or
- (6) classes for which standards have not been published.

(b) After revocation or suspension, the Office may restore the authority to the extent that it is satisfied that later actions placing positions in classes and grades will be in conformance with or consistent with published standards. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 455; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 5112. General authority of the Office of Personnel Management

(a) Notwithstanding section 5107 of this title, the Office of Personnel Management may—

- (1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position;
- (2) place in an appropriate class and grade a newly created position or a position coming initially under this chapter;
- (3) decide whether a position is in its appropriate class and grade; and
- (4) change a position from one class or grade to another class or grade when the facts warrant.

The Office shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(b) An employee affected or an agency may request at any time that the Office exercise the authority granted to it by subsection (a) of this section and the Office shall act on the request. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 456; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 5113. Classification records**

The Office of Personnel Management may—

- (1) prescribe the form in which each agency shall record the duties and responsibilities of positions and the place where these records shall be maintained;
- (2) examine these or other pertinent records of the agency; and
- (3) interview employees of the agency who have knowledge of the duties and responsibilities of positions and information as to the reasons for placing a position in a class or grade.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 456; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 12241.)

### **§ 5114. Reports; positions in GS-16, 17, and 18**

(a) The Office of Personnel Management, with respect to positions under section 5108(a) of this title, the head of the agency concerned, with respect to positions under sections 5108 (b), (c) and 5109(b) of this title, and the appropriate authority, with respect to positions under jurisdiction of the authority which are allocated to or placed in GS-16, 17, and 18, including positions so allocated or placed on a temporary or present incumbency basis, under reorganization plan or statute, except sections 5108 and 5109 of this title, shall submit, so long as the reorganization plan or statute remains in effect, to Congress, not later than February 1 of each year, a report setting forth—

- (1) the total number of positions allocated to or placed in all these grades during the immediately preceding calendar year, the total number of positions allocated to or placed in each of these grades during the immediately preceding calendar year, and the total number of these positions in existence during the immediately preceding calendar year and the grades to or in which the total number of positions in existence are allocated or placed;

- (2) the name, rate of pay, and description of the qualifications of the incumbent of each of these positions, together with the

position title and a statement of duties and responsibilities performed by the incumbent;

(3) the position or positions in or outside the Government of the United States held by each of these incumbents, and his rate or rates of pay, during the 5-year period immediately preceding the date of his appointment to the position; and

(4) such other information as the Office of Personnel Management, the head of the agency, or other appropriate authority submitting the report may consider appropriate or as may be required by Congress or a committee thereof.

This subsection does not require the resubmission of information required by paragraphs (2) and (3) of this subsection which has been reported under this subsection and which remains unchanged.

(b) When the Office, the head of the agency, or other appropriate authority considers full public disclosure of any or all of the items specified by subsection (a) of this section to be detrimental to the national security, the Office, the head of the agency, or authority may—

(1) omit from the annual report those items with respect to which full public disclosure is found to be detrimental to the national security;

(2) inform Congress of the omission; and

(3) at the request of the Congressional committee to which the report is referred, present all information concerning those items.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 456; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 5115. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this chapter, except sections 5109 and 5114. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 457; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## **CHAPTER 53—PAY RATES AND SYSTEMS**

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## SUBCHAPTER I—PAY COMPARABILITY SYSTEM

### § 5301. Policy

- (a) It is the policy of Congress that Federal pay fixing for employees under statutory pay systems be based on the principles that—  
 (1) there be equal pay for substantially equal work;  
 (2) pay distinctions be maintained in keeping with work and performance distinctions;  
 (3) Federal pay rates be comparable with private enterprise pay rates for the same levels of work; and  
 (4) pay levels for the statutory pay systems be interrelated.
- (b) The pay rates of each statutory pay system shall be fixed and adjusted in accordance with the principles under subsection (a) of this section and the provisions of sections 5305, 5306, and 5308 of this title.
- (c) For the purpose of this subchapter, “statutory pay system” means a pay system under—  
 (1) subchapter III of this chapter, relating to the General Schedule;  
 (2) subchapter IV of chapter 14 of title 22, relating to the Foreign Service of the United States; or  
 (3) chapter 73 of title 38, relating to the Department of Medicine and Surgery, Veterans’ Administration.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 458, amended Pub. L. 91–656, § 2(a), Jan. 8, 1971, 84 Stat. 1946.)

### § 5302. Repealed. Pub. L. 91–656; § 2(b)(1), Jan. 8, 1971, 84 Stat. 1946.

### § 5303. Higher minimum rates; Presidential authority

- (a) When the President finds that the pay rates in private enterprise for one or more occupations in one or more areas or locations are so substantially above the pay rates of statutory pay schedules as to handicap significantly the Government’s recruitment or retention of well-qualified individuals in positions paid under—  
 (1) section 5332 of this title;  
 (2) Repealed. Pub. L. 91–375, § 6(c)(10) Aug. 12, 1970, 84 Stat. 776;  
 (3) the pay scales for physicians, dentists, and nurses in the Department of Medicine and Surgery, Veterans’ Administration, under chapter 73 of title 38; or  
 (4) sections 867 and 870 of title 22;

he may establish for the areas or locations higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases

in all step rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate prescribed by statute for the grade or level. The President may authorize the exercise of the authority conferred on him by this section by the Office of Personnel Management or, in the case of individuals not subject to the provisions of this title governing appointment in the competitive service, by such other agency as he may designate.

(b) Within the limitations of subsection (a) of this section, rates of basic pay established under that subsection may be revised from time to time by the President or by such agency as he may designate. The actions and revisions have the force and effect of statute.

(c) An increase in rate of basic pay established under this section is not an equivalent increase in pay within the meaning of section 5335(a) of this title.

(d) The rate of basic pay established under this section and received by an individual immediately before a statutory increase, which becomes effective prior to, on, or after the date of enactment of the statute, in the pay schedule applicable to such individual of any pay system specified in subsection (a) of this section, shall be initially adjusted, effective on the effective date of the statutory increase, under conversion rules prescribed by the President or by such agency as the President may designate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 458, amended Pub. L. 90-206, § 207, Dec. 16, 1967, 81 Stat. 631; Pub. L. 91-375, § 6(c)(10), Aug. 12, 1970, 84 Stat. 776; Pub. L. 94-183, § 2(16), Dec. 31, 1975, 89 Stat. 1057; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 5304. Presidential policies and regulations

The functions, duties, and regulations of the agencies and the Office of Personnel Management with respect to this subchapter, subchapter III of this chapter, chapter 51 of this title, chapter 14 of title 22, and the provisions of chapter 73 of title 38 relating to employees in the Department of Medicine and Surgery, Veterans' Administration, are subject to such policies and regulations as the President may prescribe. Among other things, the policies and regulations of the President may provide for—

(1) preparing and reporting to him the annual comparison of Federal pay rates with private enterprise rates;

(2) obtaining and reporting to him the views of employee organizations on the annual comparison, and on other pay matters;

(3) reviewing and reporting to him on the adequacy of the Federal statutory pay structures for the Federal programs to which they apply;

(4) reviewing the relationship of Federal statutory pay rates and private enterprise pay rates in specific occupation and local areas; and

(5) providing step-increases in recognition of high quality performance and providing for properly relating supervisory pay rates paid under one system to those of subordinates paid under another system.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 459, amended Pub. L. 91-375, § (6)(c)(11), Aug. 12, 1970, 84 Stat. 776; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 5305. Annual pay reports and adjustments

(a) In order to carry out the policy stated in section 5301 of this title, the President shall—

(1) direct such agent as he considers appropriate to prepare and submit to him annually, after considering such views and recommendations as may be submitted under the provisions of subsection (b) of this section, a report that—

(A) compares the rates of pay of the statutory pay systems with the rates of pay for the same levels of work in private enterprise as determined on the basis of appropriate annual surveys that shall be conducted by the Bureau of Labor Statistics;

(B) makes recommendations for appropriate adjustments in rates of pay; and

(C) includes the views and recommendations submitted under the provisions of subsection (b) of this section;

(2) after considering the report of his agent and the findings and recommendations of the Advisory Committee on Federal Pay reported to him under section 5306(b)(3) of this title, adjust the rates of pay of each statutory pay system in accordance with the principles under section 5301(a) of this title, effective as of the beginning of the first applicable pay period commencing on or after October 1 of the applicable year; and

(3) transmit to Congress a report of the pay adjustment, together with a copy of the report submitted to him by his agent and the findings and recommendations of the Advisory Committee on Federal Pay reported to him under section 5306(b)(3) of this title.

The report transmitted to the Congress under this subsection shall specify the overall percentage of the adjustment in the rates of pay under the General Schedule and of the adjustment in the rates of pay under the other statutory pay systems.

(b) In carrying out its functions under subsection (a)(1) of this section, the President's agent shall—

(1) establish a Federal Employees Pay Council of 5 members who shall not be deemed to be employees of the Government of the United States by reason of appointment to the Council and shall not receive pay by reason of service as members of the Council, who shall be representatives of employee organizations which represent substantial numbers of employees under the statutory pay systems, and who shall be selected with due consideration to such factors as the relative numbers of employees represented by the various organizations, but no more than 3 members of the Council at any one time shall be from a single employee organization, council, federation, alliance, association, or affiliation of employee organizations;

(2) provide for meetings with the Federal Employees Pay Council and give thorough consideration to the views and recom-

mendations of the Council and the individual views and recommendations, if any, of the members of the Council regarding—

(A) the coverage of the annual survey conducted by the Bureau of Labor Statistics under subsection (a)(1) of this section (including, but not limited to, the occupations, establishment sizes, industries, and geographical areas to be surveyed);

(B) the process of comparing the rates of pay of the statutory pay systems with rates of pay for the same levels of work in private enterprise; and

(C) the adjustments in the rates of pay of the statutory pay systems that should be made to achieve comparability between those rates and the rates of pay for the same levels of work in private enterprise;

(3) give thorough consideration to the views and recommendations of employee organizations not represented on the Federal Employees Pay Council regarding the subjects in paragraph (2)(A)–(C) of this subsection; and

(4) include in its report to the President the views and recommendations submitted as provided in this subsection by the Federal Employees Pay Council, by any member of that Council, and by employee organizations not represented on that Council.

(c) (1) If, because of national emergency or economic conditions affecting the general welfare, the President should, in any year, consider it inappropriate to make the pay adjustment required by subsection (a) of this section, he shall prepare and transmit to Congress before September 1 of that year such alternative plan with respect to a pay adjustment as he considers appropriate, together with the reasons therefor, in lieu of the pay adjustments required by subsection (a) of this section. The report transmitted to the Congress under this subsection shall specify the overall percentage of the adjustment in the rates of pay under the General Schedule and of the adjustment in the rates of pay under the other statutory pay systems.

(2) An alternative plan transmitted by the President under paragraph (1) of this subsection becomes effective on the first day of the first applicable pay period commencing on or after October 1 of the applicable year and continues in effect unless, before the end of the first period of 30 calendar days of continuous session of Congress after the date on which the alternative plan is transmitted, either House adopts a resolution disapproving the alternative plan so recommended and submitted, in which case the pay adjustments for the statutory pay systems shall be made effective as provided by subsection (m) of this section. The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-day period.

(d) Subsections (e)–(k) of this section are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the

House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(e) If the committee, to which has been referred a resolution disapproving the alternative plan of the President, has not reported the resolution at the end of 10 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the same plan which has been referred to the committee.

(f) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same recommendation), and debate thereon is limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(g) If the motion to discharge is agreed to, or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same alternative plan.

(h) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to an alternative plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(i) Debate on the resolution is limited to not more than 2 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(j) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution with respect to an alternative plan, and motions to proceed to the consideration of other business, are decided without debate.

(k) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to an alternative plan are decided without debate.

(l) The rates of pay which become effective under this section are the rates of pay applicable to each position concerned, and each class of positions concerned, under a statutory pay system.

(m) If either House adopts a resolution disapproving an alternative plan submitted under subsection (c) of this section, the President shall take the action required by paragraphs (2) and (3) of subsection (a) of this section and adjust the rates of pay of the statutory pay systems effective as of the beginning of the first applicable pay period commencing on or after the date on which the resolution is adopted, or on or after October 1, whichever is later.

(n) The rates of pay that take effect under this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(1) all provisions of law enacted prior to the effective date or dates of all or part (as the case may be) of the increases; and

(2) any prior recommendations or adjustments which took effect under this section or prior provisions of law.

(o) The rates of pay that take effect under this section shall be printed in the Federal Register and the Code of Federal Regulations.

(p) An increase in rates of pay that takes effect under this section is not an equivalent increase in pay within the meaning of section 5335 of this title.

(q) Any rate of pay under this section shall be initially adjusted, effective on the effective date of the rate of pay, under conversion rules prescribed by the President or by such agencies as the President may designate.

(r) This section does not impair any authority pursuant to which rates of pay may be fixed by administrative action. (Added Pub. L. 91-656, § 3(a), Jan. 8, 1971, 84 Stat. 1946, amended Pub. L. 94-82, § 202(c), Aug. 9, 1975, 89 Stat. 420.)

#### **§ 5306. Advisory Committee on Federal Pay**

(a) There is established as an independent establishment an Advisory Committee on Federal Pay, to be composed of 3 members, not otherwise employed in the Government of the United States, appointed by the President. The Director of the Federal Mediation and Conciliation Service shall, and other interested parties may, recommend to the President for his consideration persons generally recognized for their impartiality, knowledge, and experience in the field of labor relations and pay policy to serve as members. The President shall designate one of the members as Chairman. Each appointment shall be for a term of 6 years, except that one of the original members shall be appointed for a term of 2 years, and another for a term of 4 years. A member appointed to fill a vacancy occurring before the end of the term of his predecessor shall serve for the remainder of that term. When the term of a member ends, he may continue to serve until his successor is appointed.

(b) To assist the President in carrying out the policy under section 5301 of this title, the Committee shall—

(1) review the annual report of the President's agent;

(2) consider such further views and recommendations with respect to the analysis and pay proposals contained in the annual report of the President's agent as may be presented to it in writing by employee organizations, the President's agent, other officials of the Government of the United States, and such experts as it may consult; and

(3) report its findings and recommendations to the President.

(c) The Committee may secure from any Executive agency or military department information, suggestions, estimates, statistics, and technical assistance for the purpose of carrying out its functions. Each such Executive agency or military department shall furnish the information, suggestions, estimates, statistics, and technical assistance directly to the Committee on request of the Committee.

(d) On request of the Committee the head of any Executive agency or military department may detail, on a reimbursable basis, any of its personnel to assist the Committee in carrying out its functions.

(e) The Administrator of General Services shall provide administrative support services for the Committee on a reimbursable basis.

(f) The Committee may obtain services of experts or consultants in accordance with section 3109 of this title but at rates for individuals not to exceed that of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of this chapter.

(g) Each member of the Committee is entitled to pay at the daily equivalent of the annual rate of basic pay of level IV of the Executive Schedule for each day he is engaged on work of the Committee, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703(b) of this title.

(h) The Committee may appoint and fix the pay of such personnel as may be necessary to carry out its functions. (Added Pub. L. 91-656, § 3(a), Jan. 8, 1971, 84 Stat. 1949.)

### § 5307. Pay fixed by administrative action

(a) Notwithstanding section 665 of title 31—

(1) the rates of pay of—

(A) employees in the legislative, executive, and judicial branches of the Government of the United States (except employees whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) and of the government of the District of Columbia, whose rates of pay are fixed by administrative action under law and are not otherwise adjusted under this subchapter;

(B) employees under the Architect of the Capitol, whose rates of pay are fixed under section 166b-3 of title 40, and the Superintendent of Garages, House office buildings; and

(C) persons employed by the county committees established under section 590h(b) of title 16; and

(2) any minimum or maximum rate of pay (other than a maximum rate equal to or greater than the maximum rate than currently being paid under the General Schedule as a result of the pay adjustment by the President), and any monetary limitation on or monetary allowance for pay, applicable to employees described in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection;

may be adjusted, by the appropriate authority concerned, effective at the beginning of the first applicable pay period commencing on or after the day on which a pay adjustment becomes effective under section 5305 of this title, by whichever of the following methods the appropriate authority concerned considers appropriate—

(i) by an amount or amounts not in excess of the pay adjustment provided under section 5305 of this title for corresponding rates of pay in the appropriate schedule or scale of pay;

(ii) if there are no corresponding rates of pay, by an amount or amounts equal or equivalent, insofar as practicable and with such exceptions and modifications as may be necessary to provide for appropriate pay relationships between positions, to the amount of the pay adjustment provided under section 5305 of this title;

(iii) in the case of minimum or maximum rates of pay, or monetary limitations or allowances with respect to pay, by an amount rounded to the nearest \$100 and computed on the basis of a percentage equal or equivalent, insofar as practicable and with such variations as may be appropriate, to the percentage of the pay adjustment provided under section 5305 of this title.

(b) An adjustment under subsection (a) of this section in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay, shall be made in such manner as the appropriate authority concerned considers appropriate.

(c) This section does not authorize any adjustment in the rates of pay of employees whose rates of pay are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices.

(d) This section does not impair any authority under which rates of pay may be fixed by administrative action. (Added Pub. L. 91-656, § 3(a), Jan. 8, 1971, 84 Stat. 1950.)

#### **§ 5308. Pay limitation**

Pay may not be paid, by reason of any provision of this subchapter, at a rate in excess of the rate of basic pay for level V of the Executive Schedule. (Added Pub. L. 91-656, § 3(a), Jan. 8, 1971, 84 Stat. 1951.)

## SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

### § 5311. The Executive Schedule

(a) The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions, to which this subchapter applies.

(b) (1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

(2) For the purpose of this subsection, "executive level position" means—

(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position, as defined in section 3132(a) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 458 amended. Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173, 1178.)

### § 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- (1) Secretary of State.
- (2) Secretary of the Treasury.
- (3) Secretary of Defense.
- (4) Attorney General.
- (5) Repealed. Pub. L. 91-375, § 6(c)(12), Aug. 12, 1970, 84 Stat. 776.
- (6) Secretary of the Interior.
- (7) Secretary of Agriculture.
- (8) Secretary of Commerce.
- (9) Secretary of Labor.
- (10) Secretary of Health, Education, and Welfare.
- (11) Secretary of Housing and Urban Development.

- (12) Secretary of Transportation.
- (13) Special Representative for Trade Negotiations.
- (14) Secretary of Energy.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460, amended Pub. L. 89-670 § 10(d)(1), Oct. 15, 1966, 80 Stat. 948; Presidential salary recommendations, Budget, 1970, pursuant to Pub. L. 90-206, § 225(h), Dec. 16, 1967, 81 Stat. 634; Pub. L. 91-375, § 6(c)(12), Aug. 12, 1970, 84 Stat. 776; Pub. L. 93-618, § 141(b)(3)(A), Jan. 3, 1975, 88 Stat. 1999; Pub. L. 94-82, § 202(b)(1), Aug. 9, 1975, 89 Stat. 419; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609.)

### § 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- (1) Deputy Secretary of Defense.
- (2) Deputy Secretary of State.
- (3) Administrator, Agency for International Development.
- (4) Administrator of the National Aeronautics and Space Administration.
- (5) Administrator of Veterans' Affairs.
- (6) Deputy Secretary of the Treasury.
- (7) Deputy Secretary of Transportation.
- (8) Chairman, Nuclear Regulatory Commission.
- (9) Chairman, Council of Economic Advisers.
- (10) Chairman, Board of Governors of the Federal Reserve System.
- (11) Director of the Bureau of the Budget.
- (12) Director of the Office of Science and Technology.
- (13) Director of the United States Arms Control and Disarmament Agency.
- (14) Director of the United States Information Agency.
- (15) Director of Central Intelligence.
- (16) Secretary of the Air Force.
- (17) Secretary of the Army.
- (18) Secretary of the Navy.
- (19) Administrator, Federal Aviation Administration.
- (19) Director of the National Science Foundation.
- (20) Deputy Attorney General.
- (21) Director of the Special Action Office for Drug Abuse Prevention.
- (22) Deputy Secretary of Energy.
- (23) Deputy Secretary of Agriculture.
- (24) Director of the Office of Personnel Management.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460, amended Pub. L. 89-670, § 10(d)(2), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90-83, § 1(13), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-407, § 15(a)(1), July 18, 1968, 82 Stat. 366; Presidential salary recommendations, Budget, 1970, pursuant to Pub. L. 90-206, § 225(h), Dec. 16, 1967, 81 Stat. 634; Pub. L. 91-644, § 8(b), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 92-255; § 212(a), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92-302, § 2(a), May 18, 1972, 86 Stat. 148; Pub. L. 92-352, § 104(1), July 18, 1972, 86 Stat. 490; Pub. L.

92-596, § 6, Oct. 27, 1972, 86 Stat. 1318; Pub. L. 93-438, § 310(1), Oct. 11, 1974, 88 Stat. 1252; Pub. L. 93-496, § 16(c), Oct. 28, 1974, 88 Stat. 1533; Pub. L. 94-82, § 202(b)(2), Aug. 9, 1975, 89 Stat. 419; Pub. L. 94-561, Oct. 19, 1976, 90 Stat. 2643; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-140, Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95-454, § 201(b), Oct. 13, 1978, 92 Stat. 1121.)

#### § 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- (1) Repealed. Pub. L. 91-664, § 8(a), Jan. 2, 1971, 84 Stat. 1888.
- (1) Solicitor General of the United States.
- (2) Repealed. Pub. L. 91-375, § 6(c)(13)(A), Aug. 12, 1970, 84 Stat. 776.
- (3) Repealed. Pub. L. 94-561, Oct. 19, 1976, 90 Stat. 2643.
- (4) Under Secretary of Commerce.
- (5) Repealed. Pub. L. 89-670, § 10(e), Oct. 15, 1966, 80 Stat. 948.
- (6) Under Secretary of Health, Education, and Welfare.
- (7) Under Secretary of the Interior.
- (8) Under Secretary of Labor.
- (9) Under Secretary of State for Political Affairs and Under Secretary of State for Economic Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management.
- (10) Under Secretary of the Treasury (or Counselor).
- (11) Under Secretary of the Treasury for Monetary Affairs.
- (12) Administrator of General Services.
- (13) Administrator of the Small Business Administration.
- (14) Deputy Administrator of Veterans' Affairs.
- (15) Deputy Administrator, Agency for International Development.
- (16) Chairman, Civil Aeronautics Board.
- (17) Chairman of the Merit Systems Protection Board.
- (18) Chairman, Federal Communications Commission.
- (19) Chairman, Board of Directors, Federal Deposit Insurance Corporation.
- (20) Chairman of the Federal Home Loan Bank Board.
- (21) Chairman, Federal Energy Regulatory Commission.
- (22) Chairman, Federal Trade Commission.
- (23) Chairman, Interstate Commerce Commission.
- (24) Chairman, National Labor Relations Board.
- (25) Chairman, Securities and Exchange Commission.
- (26) Chairman, Board of Directors of the Tennessee Valley Authority.
- (27) Chairman, National Mediation Board.
- (28) Chairman, Railroad Retirement Board.
- (29) Chairman, Federal Maritime Commission.

- (30) Comptroller of the Currency.
- (31) Commissioner of Internal Revenue.
- (32) Under Secretaries of Defense (2).
- (33) Deputy Administrator of the National Aeronautics and Space Administration.
- (34) Deputy Director of the Bureau of the Budget.
- (35) Deputy Director of Central Intelligence.
- (36) Director of the Office of Emergency Planning.
- (37) Director of the Peace Corps.
- (38) Repealed. Pub. L. 94-123, § 2(c) (1), Oct. 22, 1975, 89 Stat. 670.
- (39) Deputy Director, National Science Foundation.
- (40) Repealed. Pub. L. 90-83, § 1(14) (A), Sept. 11, 1967, 81 Stat. 198.
- (41) President of the Export-Import Bank of Washington.
- (42) Members, Nuclear Regulatory Commission.
- (43) Members, Board of Governors of the Federal Reserve System.
- (44) Director of the Federal Bureau of Investigation, Department of Justice.<sup>1</sup>
- (45) Administrator, Federal Highway Administration.
- (46) Administrator, Federal Railroad Administration.
- (47) Chairman, National Transportation Safety Board.
- (48) Chairman of the National Endowment for the Arts the incumbent of which also serves as Chairman of the National Council on the Arts.
- (49) Chairman of the National Endowment for the Humanities.
- (50) Director of the Federal Mediation and Conciliation Service.
- (51) Under Secretary of Housing and Urban Development.
- (52) Repealed. Pub. L. 95-88, Aug. 3, 1977, 91 Stat. 542.
- (53) Repealed. Pub. L. 95-88, Aug. 3, 1977, 91 Stat. 542.
- (54) Chairman, Postal Rate Commission.
- (55) Administrator of Law Enforcement Assistance.
- (56) Chairman, Occupational Safety and Health Review Commission.
- (57) Governor of the Farm Credit Administration.
- (58) Chairman, Equal Employment Opportunity Commission.
- (59) Chairman, Consumer Product Safety Commission.
- (60) Under Secretary, Department of Energy.
- (61) Chairman, Commodity Futures Trading Commission.
- (62) Deputy Special Representative for Trade Negotiations (2).
- (63) Chairman, United States International Trade Commission.
- (64) Director of the Office of Drug Abuse Policy.

<sup>1</sup> The position of the Director of the Federal Bureau of Investigation was placed temporarily in level II as long as the then present incumbent, J. Edgar Hoover, held that office. (Pub. L. 88-426, § 303(b), Aug. 14, 1964, 78 Stat. 416.) Section 1101 of the Omnibus Crime Control and Safe Streets Act of 1968 has effectively superseded clause (44) of this section (placing the Director in level III permanently) in providing that when the present incumbent of the position of Director leaves office, his successors will be appointed by and with the advice and consent of the Senate, and they will be paid at the rate prescribed for level II. (Pub. L. 90-351, § 1101, June 19, 1968, 82 Stat. 236.)

(65) Administrator, National Oceanic and Atmospheric Administration.

(66) Chairman, Federal Mine Safety and Health Review Commission.

(68) Deputy Director of the Office of Personnel Management.

(69) Under Secretary of Agriculture for International Affairs and Commodity Programs.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 460, amended Pub. L. 89-670, § 10(d)(3), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90-83, § 1(14), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-206, § 215(a), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-407; § 15(a)(2), July 18, 1968, 82 Stat. 367; Pub. L. 90-623, § 1(26), Oct. 22, 1968, 82 Stat. 1314; Presidential salary recommendations, Budget, 1970, pursuant to Pub. L. 90-206, § 225(h), Dec. 16, 1967, 81 Stat. 634; Pub. L. 91-175, § 503(1), Dec. 20, 1969, 83 Stat. 826; Pub. L. 91-375, § 6(c)(13), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91-596, § 12(c)(1), Dec. 29, 1970, 84 Stat. 1604; Pub. L. 91-644, §§ 7(1), 8(a), Jan. 2, 1971, 84 Stat. 1887, 1888; Pub. L. 92-181, § 5.27(a), Dec. 10, 1971, 85 Stat. 625; Pub. L. 92-226, § 403, Feb. 7, 1972, 86 Stat. 34; Pub. L. 92-261, § 9(a), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92-302, § 2(b), May 18, 1972, 86 Stat. 149; Pub. L. 92-352, § 104(2), July 13, 1972, 86 Stat. 490; Pub. L. 92-573, § 4(h)(1), Oct. 27, 1972, 86 Stat. 1211; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93-438, § 310(2), Oct. 11, 1974, 88 Stat. 1252; Pub. L. 93-463, § 102(a), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 93-618, §§ 141(b)(3) (B), 172(c)(1), Jan. 3, 1975, 88 Stat. 1999, 2010; Pub. L. 94-82, § 202(b)(3), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94-183, § 2(17), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 94-237, § 209(a), March 19, 1976, 90 Stat. 243; Pub. L. 94-461, Oct. 8, 1976, 90 Stat. 1969; Pub. L. 95-88, Aug. 3, 1977, 91 Stat. 542; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-139, Oct. 19, 1977, 91 Stat. 1171; Pub. L. 95-140, Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95-164, Nov. 9, 1977, 91 Stat. 1820; Pub. L. 95-426, Oct. 7, 1978, 92 Stat. 969; Pub. L. 95-454, § 201(b), Oct. 13, 1978, 92 Stat. 1121; Pub. L. 95-454, § 202(c), Oct. 13, 1978, 92 Stat. 1131; Pub. L. 95-501, Oct. 21, 1978, 92 Stat. 1691.)

### § 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

(1) Repealed. Pub. L. 95-105, Aug. 15, 1977, 91 Stat. 847.

(2) Repealed. Pub. L. 89-670, § 10(e), Oct. 15, 1966, 80 Stat. 948.

(3) Deputy Administrator of General Services.

(4) Associate Administrator of the National Aeronautics and Space Administration.

(5) Assistant Administrators, Agency for International Development (6).

(6) Regional Assistant Administrators, Agency for International Development (4).

(7) Under Secretary of the Air Force.

(8) Under Secretary of the Army.

(9) Under Secretary of the Navy.

(10) Repealed. Pub. L. 95-426, 92 Stat. 969.

(11) Assistant Secretaries of Agriculture (5).

- (12) Assistant Secretaries of Commerce (8).
- (13) Assistant Secretaries of Defense (9).
- (14) Assistant Secretaries of the Air Force (4).
- (15) Assistant Secretaries of the Army (5).
- (16) Assistant Secretaries of the Navy (4).
- (17) Assistant Secretaries of Health, Education, and Welfare (5).
  - (18) Assistant Secretaries of the Interior (6).
  - (19) Assistant Attorneys General (9).
  - (20) Assistant Secretaries of Labor (5).
- (21) Repealed. Pub. L. 91-375, § 6(c)(14)(A), Aug. 12, 1970, 84 Stat. 776.
  - (22) Assistant Secretaries of State (13).
  - (23) Assistant Secretaries of the Treasury (5).
  - (24) Members, United States International Trade Commission.
  - (25)-(28) Repealed. Pub. L. 90-83, § 1(15)(E), Sept. 11, 1967, 81 Stat. 198.
    - (29) Director of Civil Defense, Department of the Army.
    - (30) Repealed. Pub. L. 90-83, § 1(15)(E), Sept. 11, 1967, 81 Stat. 198.
  - (31) Repealed. Pub. L. 94-123, § 2(c)(2), Oct. 22, 1975, 89 Stat. 670.
    - (32) Deputy Director of the Office of Emergency Planning.
    - (33) Deputy Director of the Office of Science and Technology.
    - (34) Deputy Director of the Peace Corps.
    - (35) Deputy Director of the United States Arms Control and Disarmament Agency.
    - (36) Deputy Director of the United States Information Agency.
      - (37) Assistant Directors of the Bureau of the Budget (3).
      - (38) General Counsel of the Department of Agriculture.
      - (39) General Counsel of the Department of Commerce.
      - (40) General Counsel of the Department of Defense.
      - (41) General Counsel of the Department of Health, Education, and Welfare.
    - (42) Solicitor of the Department of the Interior.
    - (43) Solicitor of the Department of Labor.
    - (44) General Counsel of the National Labor Relations Board.
    - (45) Repealed. Pub. L. 91-375, § 6(c)(14)(A), Aug. 12, 1970, 84 Stat. 776.
      - (46) Counsel of the Department of State.
      - (47) Legal Adviser of the Department of State.
      - (48) General Counsel of the Department of the Treasury.
      - (49) First Vice President of the Export-Import Bank of Washington.
    - (50) Special Representative for Arms Control and Disarmament Negotiations, United States Arm Control and Disarmament Agency.
    - (50) Repealed. Pub. L. 93-438 § 310(3), Oct. 11, 1974, 88 Stat. 1253.
    - (51) Repealed. Pub. L. 92-181, § 5.27(a), Dec. 10, 1971, 85 Stat. 625.
    - (52) Repealed. Pub. L. 95-88, § 124(b), Aug. 3, 1977, 91 Stat. 542.

- (53) Repealed. Pub. L. 95-88, § 124(b), Aug. 3, 1977, 91 Stat. 542.
- (54) Members, Civil Aeronautics Board.
- (55) Members, Council of Economic Advisers.
- (56) Members, Board of Directors of the Export-Import Bank of Washington.
- (57) Members, Federal Communications Commission.
- (58) Members, Board of Directors of the Federal Deposit Insurance Corporation.
- (59) Members, Federal Home Loan Bank Board.
- (60) Members, Federal Energy Regulatory Commission.
- (61) Members, Federal Trade Commission.
- (62) Members, Federal Interstate Commerce Commission.
- (63) Members, National Labor Relations Board.
- (64) Members, Securities and Exchange Commission.
- (65) Members, Board of Directors of the Tennessee Valley Authority.
- (66) Members, Merit Systems Protection Board.
- (67) Members, Federal Maritime Commission.
- (68) Members, National Mediation Board.
- (69) Members, Railroad Retirement Board.
- (70) Director of Selective Service.
- (71) Associate Director of the Federal Bureau of Investigation, Department of Justice.
- (72) Members, Equal Employment Opportunity Commission (4).
- (73) Chief of Protocol, Department of State.
- (74) Director, Bureau of Intelligence and Research, Department of State.
- (75) Director, Community Relations Service.
- (76) United States Attorney for the District of Columbia.
- (77) United States Attorney for the Southern District of New York.
- (78) Members, National Transportation Safety Board.
- (79) General Counsel, Department of Transportation.
- (80) Deputy Administrator, Federal Aviation Administration.
- (81) Assistant Secretaries of Transportation (4).
- (82) Director of Public Roads.
- (83) Administrator of the St. Lawrence Seaway Development Corporation.
- (84) Assistant Secretary for Science, Smithsonian Institution.
- (85) Assistant Secretary for History and Art, Smithsonian Institution.
- (86) Deputy Administrator of the Small Business Administration.
- (87) Assistant Secretaries of Housing and Urban Development (8).
- (88) General Counsel of the Department of Housing and Urban Development.
- (89) Commissioner of Interama.
- (90) Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration.
- (91) Federal Insurance Administrator, Department of Housing and Urban Development.

- (92) Executive Vice President, Overseas Private Investment Corporation.
- (93) Administrator of the National Credit Union Administration.
- (94) Members, Postal Rate Commission (4).
- (95) Members, Occupational Safety and Health Review Commission.
- (96) Deputy Director of the Office of Drug Abuse Policy.
- (97) Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).
- (98) Members, Consumer Product Safety Commission (4).
- (99) Commissioner of Social Security, Department of Health, Education, and Welfare.
- (100) Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.
- (101) Administrator for Federal Procurement Policy.
- (102) Repealed Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609.
- (103) Members, Commodity Futures Trading Commission.
- (104) Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.
- (105) Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.
- (106) Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.
- (107) Executive Director for Operations, Nuclear Regulatory Commission.
- (108) President, Government National Mortgage Association, Department of Housing and Urban Development.
- (109) Deputy Administrator, National Oceanic and Atmospheric Administration.
- (109) Commissioner of Immigration and Naturalization, Department of Justice.
- (110) Associate Administrator, National Oceanic and Atmospheric Administration.
- (110) United States attorney for the Northern District of Illinois.
- (111) United States attorney for the Central District of California.
- (112) Director, Bureau of Prisons, Department of Justice.
- (113) Deputy Administrator for Administration of the Law Enforcement Assistance Administration.
- (114) Assistant Secretaries of Energy (8).
- (115) General Counsel of the Department of Energy.
- (116) Administrator, Economic Regulatory Administration, Department of Energy.
- (117) Administrator, Energy Information Administration, Department of Energy.
- (118) Inspector General, Department of Energy.
- (119) Director, Office of Energy Research, Department of Energy.
- (120) Assistant Secretary of Labor for Mine Safety and Health.
- (121) Members, Federal Mine Safety and Health Review Commission.

- (122) Associate Directors of the Office of Personnel Management (5).  
(122) President, National Consumer Cooperative Bank.  
(123) Director, Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.  
(122) Assistant Secretary for International Narcotics Matters, Department of State.  
(122) Inspector General, Department of Health, Education, and Welfare.  
(123) Inspector General, Department of Agriculture.  
(124) Inspector General, Department of Housing and Urban Development.  
(125) Inspector General, Department of Labor.  
(126) Inspector General, Department of Transportation.  
(127) Inspector General, Veterans' Administration.  
(123) Special Counsel of the Merit Systems Protection Board.  
(124) Chairman, Federal Labor Relations Authority.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 461, amended Pub. L. 89-670, § 10(d)(4), (e), Oct. 15, 1966, 80 Stat. 948, Pub. L. 89-734, § 1(1), Nov. 2, 1966, 80 Stat. 1163; Pub. L. 89-779, § 8(c)(1), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90-83, § 1(15), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-206, title II, § 215(b), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-351, title I, § 505, June 19, 1968, 82 Stat. 205; Pub. L. 90-448, title XI, § 1105(b), title XVII, § 1708(b), Aug. 1, 1968, 82 Stat. 567, 606; Pub. L. 90-623, § 1(4), Oct. 22, 1968, 82 Stat. 1312; Presidential salary recommendations, Budget, 1970, pursuant to Pub. L. 90-206, § 225(h), Dec. 16, 1967, 81 Stat. 634; Pub. L. 91-121, § 404(b), Nov. 19, 1969, 83 Stat. 207; Pub. L. 91-175, § 503(2), Dec. 20, 1969, 83 Stat. 826; Pub. L. 91-206, § 5(b), Mar. 10, 1970, 84 Stat. 51; Pub. L. 91-375, § 6(c)(14), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91-469, § 42(b), Oct. 21, 1970, 84 Stat. 1038; Pub. L. 91-477, § 3(b), Oct. 21, 1970, 84 Stat. 1072; Pub. L. 91-596, §§ 12(c)(2), 29(b), Dec. 29, 1970, 84 Stat. 1604; Pub. L. 91-611, § 211(b), Dec. 31, 1970, 84 Stat. 1829; Pub. L. 91-644, § 7(1), (2), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 92-22, § 2, June 1, 1971, 85 Stat. 76; Pub. L. 92-181, § 5.27(a), Dec. 10, 1971, 86 Stat. 625; Pub. L. 92-215, § 2, Dec. 22, 1971, 85 Stat. 777; Pub. L. 92-255, § 212(b), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92-261, § 9(b), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92-302, § 2(c), May 18, 1972, 86 Stat. 149; Pub. L. 92-352, § 104(3), 86 Stat. 490; Pub. L. 92-419, § 604(b), 86 Stat. 676; Pub. L. 92-573, § 4(h)(2), Oct. 27, 1972, 86 Stat. 1211; Pub. L. 92-603, § 404(b), Oct. 30, 1972, 86 Stat. 1488; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93-312, § 9, June 8, 1974, 88 Stat. 238; Pub. L. 93-383, § 818(c), Aug. 22, 1974, 88 Stat. 740; Pub. L. 93-400, § 13, Aug. 30, 1974, 88 Stat. 799; Pub. L. 93-438, § 310(3), Oct. 11, 1974, 88 Stat. 1253; Pub. L. 93-463, § 102(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 93-618, § 172(c)(2), Jan. 3, 1975, 88 Stat. 2010; Pub. L. 94-82, § 202(b)(4), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94-183, § 2(18), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 94-237, § 209(b), March 19, 1976, 90 Stat. 243; Pub. L. 94-375, § 17(c), Aug. 3, 1976, 90 Stat. 1077; Pub. L. 94-461, Oct. 8, 1976, 90 Stat. 1969; Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2426; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-105, Aug. 15, 1977, 91 Stat. 847; Pub. L. 95-108, Aug. 17, 1977, 91 Stat. 871; Pub. L. 95-164, Nov. 9, 1977, 91 Stat. 1319; Pub. L.

95–173, Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95–351, § 302, Aug. 20, 1978, 92 Stat. 514; Pub. L. 95–426, Oct. 7, 1978, 92 Stat. 969; Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1108; Pub. L. 95–454, § 201(b), Oct. 13, 1978, 92 Stat. 1121; Pub. L. 95–454, § 202(c), Oct. 13, 1978, 92 Stat. 1131 and 1217.)

### § 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- (1) Administrator, Agricultural Marketing Service, Department of Agriculture.
- (2) Administrator, Agricultural Research Service, Department of Agriculture.
- (3) Administrator, Agricultural Stabilization and Conservation Service, Department of Agriculture.
- (4) Administrator, Farmers Home Administration.
- (5) Administrator, Foreign Agricultural Service, Department of Agriculture.
- (6) Administrator, Rural Electrification Administration, Department of Agriculture.
- (7) Administrator, Soil Conservation Service, Department of Agriculture.
- (8) Administrator, Bonneville Power Administration, Department of the Interior.
- (9) Administrator of the National Capital Transportation Agency.
- (10) Repealed. Pub. L. 89–670, § 10(e), Oct. 15, 1966, 80 Stat. 948.
- (11) Associate Administrators of the Small Business Administration (4).
- (12)–(14) Repealed. Pub. L. 89–670, § 10(e), Oct. 15, 1966, 80 Stat. 948.
- (15) Associate Administrators, National Aeronautics and Space Administration (7).
- (16) Repealed. Pub. L. 93–74, § 8, July 23, 1973, 87 Stat. 175.
- (17) Repealed. Pub. L. 93–74, § 8, July 23, 1973, 87 Stat. 175.
- (18) Associate Deputy Administrator, National Aeronautics and Space Administration.
- (19) Deputy Associate Administrator, National Aeronautics and Space Administration.
- (20) Associate Deputy Administrator of Veterans' Affairs.
- (21) Archivist of the United States.
- (22) Repealed. Pub. L. 90–83, § 1(16)(A), Sept. 11, 1967, 81 Stat. 198.
- (23) Assistant Secretary of Agriculture for Administration.
- (24) Assistant Secretary of Health, Education, and Welfare for Administration.
- (25) Repealed. Pub. L. 92–22, § 3, June 1, 1971, 85 Stat. 76.
- (26) Assistant Attorney General for Administration.
- (27) Assistant Secretary of Labor for Administration.
- (28) Repealed. Pub. L. 92–302, § 2(d), May 18, 1972, 86 Stat. 149.

- (29) Repealed. Pub. L. 93-438, § 310(4), Oct. 11, 1974, 88 Stat. 1253.
- (30) Assistant and Science Adviser to the Secretary of the Interior.
- (31) Chairman, Foreign Claims Settlement Commission of the United States.
- (32) Chairman of the Military Liaison Committee to the Atomic Energy Commission, Department of Defense.
- (33) Chairman of the Renegotiation Board.
- (34) Chairman of the Subversive Activities Control Board.
- (35) Chief Counsel for the Internal Revenue Service, Department of the Treasury.
- (36) Chief Forester of the Forest Service, Department of Agriculture.
- (37) Repealed. Pub. L. 91-375, § 6(c)(15), Aug. 12, 1970, 84 Stat. 776.
- (38) Repealed. Pub. L. 90-83, § 1(16)(A), Sept. 11, 1967, 81 Stat. 198.
- (39) Commissioner of Customs, Department of the Treasury.
- (40) Commissioner, Federal Supply Service, General Services Administration.
- (41) Commissioner of Education, Department of Health, Education, and Welfare.
- (42) Director, United States Fish and Wildlife Service, Department of the Interior.
- (43) Commissioner of Food and Drugs, Department of Health, Education, and Welfare.
- (44) Repealed. Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2427.
- (45) Commissioner of Indian Affairs, Department of the Interior.
- (46) Repealed. Pub. L. 90-9, § 6, Apr. 10, 1967, 81 Stat. 12.
- (47) Commissioners, Indian Claims Commission (5).
- (48) Commissioner of Patents, Department of Commerce.
- (49) Commissioner, Public Buildings Service, General Services Administration.
- (50) Commissioner of Reclamation, Department of the Interior.
- (51) Repealed. Pub. L. 92-603, § 404(a), Oct. 30, 1972, 86 Stat. 1488.
- (52) Commissioner of Vocational Rehabilitation, Department of Health, Education, and Welfare.
- (53) Commissioner of Welfare, Department of Health, Education, and Welfare.
- (54) Director, Advanced Research Projects Agency, Department of Defense.
- (55) Repealed. Pub. L. 94-561, Oct. 19, 1976, 90 Stat. 2643.
- (56) Director, Bureau of the Census, Department of Commerce.
- (57) Director, Bureau of Mines, Department of the Interior.
- (58) Repealed. Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2427.
- (59) Director, Geological Survey, Department of the Interior.
- (60) Repealed. Pub. L. 91-375, § 6(c)(15), Aug. 12, 1970, 84 Stat. 776.
- (61) Director, National Bureau of Standards, Department of Commerce.

- (62) Repealed. Pub. L. 93-438, § 310(4), Oct. 11, 1974, 88 Stat. 1253.
- (63) Director of Science and Education, Department of Agriculture.
- (64) Repealed. Pub. L. 92-302, § 2(d), May 18, 1972, 86 Stat. 149.
- (65) Deputy Commissioner of Internal Revenue, Department of the Treasury.
- (66) Assistant Directors, National Science Foundation (4).
- (67) Deputy Director, Policy and Plans, United States Information Agency.
- (68) Deputy General Counsel, Department of Defense.
- (69) Repealed. Pub. L. 93-438, § 310(4), Oct. 11, 1974, 88 Stat. 1253.
- (70) Associate Director of the Federal Mediation and Conciliation Service.
- (71) Associate Director for Volunteers, Peace Corps.
- (72) Associate Director for Program Development and Operations, Peace Corps.
- (73) Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).
- (74) Assistant Directors, Office of Emergency Planning (3).
- (75) Assistant Directors, United States Arms Control and Disarmament Agency (4).
- (76) Repealed. Pub. L. 89-670, § 10(e), Oct. 15, 1966, 80 Stat. 948.
- (77) Fiscal Assistant Secretary of the Treasury.
- (78) General Counsel of the Agency for International Development.
- (79) General Counsel of the Department of the Air Force.
- (80) General Counsel of the Department of the Army.
- (81) General Counsel of the Nuclear Regulatory Commission.
- (82) Repealed. Pub. L. 89-670, § 10(e), Oct. 15, 1966, 80 Stat. 948.
- (83) Repealed. Pub. L. 90-83, § 1(16)(A), Sept. 11, 1967, 81 Stat. 198.
- (84) General Counsel of the Department of the Navy.
- (85) General Counsel of the United States Arms Control and Disarmament Agency.
- (86) General Counsel of the National Aeronautics and Space Administration.
- (87) Governor of the Canal Zone.
- (88) Manpower Administrator, Department of Labor.
- (89) Maritime Administrator, Department of Commerce.
- (90) Members, Foreign Claims Settlement Commission of the United States.
- (91) Members, Renegotiation Board.
- (92) Members, Subversive Activities Control Board.
- (93) Repealed. Pub. L. 93-618, § 172(c)(3), Jan. 3, 1975, 88 Stat. 2010.
- (94), (95) Repealed. Pub. L. 90-83, § 1(16)(A), Sept. 11, 1967, 81 Stat. 198.
- (96) Deputy Directors of Defense Research and Engineering, Department of Defense (4).

- (97) Assistant Administrator of General Services.
- (98) Director, United States Travel Service, Department of Commerce.
- (99) Repealed. Pub. L. 95-454, § 202(c), Oct. 13, 1978, 92 Stat. 1131.
- (100) Administrator, Wage and Hour and Public Contracts Division, Department of Labor.
- (101) Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.
- (102) Repealed. Pub. L. 93-438, § 310(4), Oct. 11, 1974, 88 Stat. 1253.
- (103) Associate Director (Policy and Plans), United States Information Agency.
- (104) Chief Benefits Director, Veterans' Administration.
- (105) Commissioner of Labor Statistics, Department of Labor.
- (106) Deputy Director, National Security Agency.
- (107) Director, Bureau of Land Management, Department of the Interior.
- (108) Director, National Park Service, Department of the Interior.
- (109) Repealed. Pub. L. 93-312, § 9; June 8, 1974, 88 Stat. 238.
- (110) General Counsel of the Veteran's Administration.
- (111) Repealed. Pub. L. 92-261, § 9(c), Mar. 24, 1972, 86 Stat. 110.
- (112) National Export Expansion Coordinator, Department of Commerce.
- (113) Special Assistant to the Secretary of Defense.
- (114) Staff Director, Commission on Civil Rights.
- (115) Repealed. Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2427.
- (116) Repealed. Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2427.
- (117) Assistant Secretary for Administration, Department of Transportation.
- (118) Director, United States National Museum, Smithsonian Institution.
- (119) Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.
- (120) Administrator for Economic Development.
- (121) Administrator of the Environmental Science Services Administration.
- (122) Repealed. Pub. L. 93-383, § 818(b), Aug. 22, 1974, 88 Stat. 740.
- (123) Repealed. Pub. L. 91-375, § 6(c)(15), Aug. 12, 1970, 84 Stat. 776.
- (124) Director, National Highway Safety Bureau.
- (125) Director, National Traffic Safety Bureau.
- (126) Repealed. Pub. L. 91-644, § 7(2), Jan. 2, 1971, 84 Stat. 1887.
- (127) Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.
- (128) Auditor-General of the Agency for International Development.
- (129) Vice Presidents, Overseas Private Investment Corporation (3).

- (130) Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation.
- (131) Assistant Directors, Special Action Office for Drug Abuse Prevention (6).
- (132) General Counsel of the Equal Employment Opportunity Commission.
- (133) Director, National Cemetery System, Veterans' Administration.
- (134) Repealed. Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2427.
- (135) Deputy Inspector General, Department of Energy.
- (136) Additional officers, Department of Energy (14).
- (137) General Counsel, Commodity Futures Trading Commission.
- (137) Administrator, Animal and Plant Health Inspection Service, Department of Agriculture.
- (137) Administrator, Federal Grain Inspection Service, Department of Agriculture.
- (138) Additional officers, Nuclear Regulatory Commission (5).
- (139) Executive Director, Commodity Futures Trading Commission.
- (140) Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.
- (141) Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.
- (141) Associate Administrator, Office of Juvenile Justice and Delinquency Prevention of the Law Enforcement Assistance Administration.
- (142) Assistant Administrators (3), National Oceanic and Atmospheric Administration.
- (143) General Counsel, National Oceanic and Atmospheric Administration.
- (144) Deputy Inspector General, Department of Health, Education, and Welfare.
- (145) Inspector General, Department of Commerce.
- (146) Inspector General, Department of the Interior.
- (147) Inspector General, Community Services Administration.
- (148) Inspector General, Environmental Protection Agency.
- (149) Inspector General, General Services Administration.
- (150) Inspector General, National Aeronautics and Space Administration.
- (151) Inspector General, Small Business Administration.
- (145) Members, Federal Labor Relations Authority (2) and its General Counsel.
- (146) Director of the Office of Government Ethics.
- (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 463; amended Pub. L. 89-670, § 10(d)(5), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 89-734, § 1(2), Nov. 2, 1966, 80 Stat. 1163; Pub. L. 89-779, § 8(e)(2), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90-9, § 6, Apr. 10, 1967, 81 Stat. 12; Pub. L. 90-83, § 1(16), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90-206, title II, § 215(c), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-351, title I, § 506, June 19, 1968, 82 Stat. 205; Pub. L. 90-407, § 15(a)(3), July 18, 1968, 82 Stat. 367; Pub. L. 90-623, § 1(4), (5), Oct. 22, 1968, 82 Stat. 1312; Presidential salary recommendations, Budget, 1970, pursuant to Pub. L. 90-206, § 225(h), Dec. 16, 1967, 81 Stat. 634; Pub. L. 91-175, § 503(3), Dec. 30,

1969, 83 Stat. 826; Pub. L. 91-375, § 6(c) (15), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91-453, § 12, Oct. 15, 1970, 84 Stat. 968; Pub. L. 91-644, § 7(2), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 92-22, § 3, June 1, 1971, 85 Stat. 76; Pub. L. 92-255, § 212(c), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92-261, § 9(c), (d), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92-302, § 2(d), May 18, 1972, 86 Stat. 149; Pub. L. 92-603, § 404(a), Oct. 30, 1972, 86 Stat. 1488; Pub. L. 93-43, § 2(c), June 18, 1973, 87 Stat. 78; Pub. L. 93-74, § 8, July 23, 1973, 87 Stat. 175; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93-271, § 2, Apr. 22, 1974, 88 Stat. 92; Pub. L. 93-312, § 9, June 8, 1974, 88 Stat. 238; Pub. L. 93-383, § 818(b), Aug. 22, 1974, 88 Stat. 740; Pub. L. 93-438, § 310(4), Oct. 11, 1974, 88 Stat. 1253; Pub. L. 93-463, § 102(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 93-618, § 172(c) (3), Jan. 3, 1975, 88 Stat. 2010; Pub. L. 94-82, § 202 (b) (5), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94-183, § 2(19), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94-307, § 7, June 4, 1976, 90 Stat. 681; Pub. L. 94-370, § 15, July 26, 1976, 90 Stat. 1032; Pub. L. 94-561, Oct. 19, 1976, 90 Stat. 2643; Pub. L. 94-582, Oct. 21, 1976, 90 Stat. 2889; Pub. L. 95-89, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 609; Pub. L. 95-115, Oct. 3, 1977, 91 Stat. 1049; Pub. L. 95-219, Dec. 28, 1977, 91 Stat. 1614; Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1109; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1217; Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1864.)

### **§ 5317. Presidential authority to place positions at levels IV and V**

In addition to the positions listed in sections 5315 and 5316 of this title, the President, from time to time, may place in levels IV and V of the Executive Schedule positions held by not to exceed 34 individuals when he considers that action necessary to reflect changes in organization, management responsibilities, or workload in an Executive agency. Such an action with respect to a position to which appointment is made by the President by and with the advice and consent of the Senate is effective only at the time of a new appointment to the position. Notice of each action taken under this section shall be published in the Federal Register, except when the President determines that the publication would be contrary to the interest of national security. The President may not take action under this section with respect to a position the pay for which is fixed at a specific rate by this subchapter or by statute enacted after August 14, 1964. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 467, amended Pub. L. 89-670, § 10(d) (6), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90-83, § 1(17), Sept. 11, 1967, 81 Stat. 199.)

### **§ 5318. Adjustments in rates of pay**

Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, the annual rate of pay for positions at each level of the Executive Schedule shall be adjusted by an amount, rounded to the nearest multiple of \$100 (or if midway between multiples of \$100, to the next higher multiple of \$100), equal to the percentage of such annual rate of pay which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule. (Pub. L. 94-82, § 202(a), Aug. 9, 1975, 89 Stat. 419.)

## SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

**§ 5331. Definitions; application**

(a) For the purpose of this subchapter, "agency", "employee", "position", "class", and "grade" have the meanings given them by section 5102 of this title.

(b) This subchapter applies to employees and positions, other than Senior Executive positions, to which chapter 51 of this title applies. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 467; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173.)

**§ 5332. The General Schedule**

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this chapter applies, except an employee covered by the merit pay system established under section 5402 of this title, is entitled to basic pay in accordance with the General Schedule.

## GENERAL SCHEDULE I

Grade	Annual rates and steps									
	1	2	3	4	5	6	7	8	9	10
GS-1-----	\$6,561	\$6,780	\$6,999	\$7,218	\$7,437	\$7,656	\$7,875	\$8,094	\$8,313	\$8,532
GS-2-----	7,422	7,669	7,916	8,163	8,410	8,657	8,904	9,151	9,398	9,645
GS-3-----	8,366	8,645	8,924	9,203	9,482	9,761	10,040	10,319	10,598	10,877
GS-4-----	9,391	9,704	10,017	10,330	10,643	10,956	11,269	11,582	11,895	12,208
GS-5-----	10,507	10,857	11,207	11,557	11,907	12,257	12,607	12,957	13,307	13,657
GS-6-----	11,712	12,102	12,492	12,882	13,272	13,662	14,052	14,442	14,832	15,222
GS-7-----	13,014	13,448	13,882	14,316	14,750	15,184	15,618	16,052	16,486	16,920
GS-8-----	14,414	14,894	15,374	15,854	16,334	16,814	17,294	17,774	18,254	18,734
GS-9-----	15,920	16,451	16,982	17,513	18,044	18,575	19,106	19,637	20,168	20,699
GS-10-----	17,532	18,116	18,700	19,284	19,868	20,452	21,036	21,620	22,204	22,788
GS-11-----	19,263	19,905	20,547	21,189	21,831	22,473	23,115	23,757	24,399	25,041
GS-12-----	23,087	23,857	24,627	25,397	26,167	26,937	27,707	28,477	29,247	30,017
GS-13-----	27,453	28,368	29,283	30,198	31,113	32,028	32,943	33,858	34,773	35,688
GS-14-----	32,442	33,523	34,604	35,685	36,766	37,847	38,928	40,009	41,090	42,171
GS-15-----	38,160	39,432	40,704	41,976	43,248	44,520	45,792	47,064	48,336	49,608
GS-16-----	44,756	46,248	47,740	49,232	50,724	52,216	53,708	55,200	56,692	
GS-17-----	152,429	154,177	155,925	157,673	159,421					
GS-18-----	161,449									

<sup>1</sup> Basic pay is limited by sec. 5308 of title 5 of the United States Code to the rate for level V of the Executive Schedule. In addition pursuant to sec. 304 of the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary in this schedule at a rate which exceeds the rate for level V of the Executive Schedule in effect on Sept. 30, 1978, which is \$47,500.

Note: The rates in this General Schedule are effective on the 1st day of the 1st pay period beginning on or after Oct. 1, 1978, and they were prescribed by the President in Executive Order 12087 (Oct. 7, 1978) pursuant to subch. 1 of ch. 53 of this title.

(b) When payment is made on the basis of an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay named by subsection (a) of this section in accordance with the rules prescribed by section 5504(b) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 467, amended Pub. L. 90-83, § 1(18), Sept. 11, 1967, 81 Stat. 199; Pub. L. 90-206, § 202(a), Dec. 16, 1967, 81 Stat. 624; Pub. L. 91-656, § 3(c), Jan. 8, 1971, 84 Stat. 1946; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1184.)

**§ 5333. Minimum rate for new appointments; higher rates for supervisors of wage-board employees**

(a) New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position in GS-11 or above at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

(b) Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 467, amended Pub. L. 90-83, § 1(19), Sept. 11, 1967, 81 Stat. 199; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 5334. Rate on change of position or type of appointment; regulations**

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

- (1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;
- (2) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter applies to another such position;
- (3) he is demoted to a position in a lower grade;
- (4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch;
- (5) his type of appointment is changed;
- (6) his employment status is otherwise changed; or
- (7) his position is changed from one grade to another grade.

For the purpose of this subsection, an individual employed by the Appalachian Regional Commission under section 106(a) of title 40, appendix, or by a regional commission established pursuant to section 3182 of title 42, under section 3186(2) of that title, who was a Federal employee immediately prior to such employment by a commission and within 6 months after separation from such employment is employed in a position to which this subchapter applies, shall be treated as if transferred for a position in the executive branch to which this subchapter does not apply.

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

- (1) the maximum rate of the higher grade; or
- (2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

- (A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or

- (B) his existing rate of basic pay, if that rate is the higher.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Clerk of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

- (1) at the minimum rate of the appropriate grade; or

- (2) at a step, or for an employee appointed to a position covered by the merit pay system established under section 5402 of this title, any dollar amount, of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

(d) The rate of pay established for a teaching position as defined by section 901 of title 20 held by an individual who becomes subject to subsection (a) of this section is deemed increased by 20 percent to determine the yearly rate of pay of the position.

(e) An employee of a county committee established pursuant to section 590h(b) of title 16 may upon appointment to a position under the Department of Agriculture, subject to this subchapter, have his initial rate of basic pay fixed at the minimum rate of the appropriate grade, or at any step of such grade that does not exceed the highest previous rate of basic pay received by him during service with such county committee.

(f) In the case of an employee covered by the merit pay system established under section 5402 of this title, all references in this section to "two steps" or "two step-increases" shall be deemed to mean 6 percent. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 468, amended Pub. L. 90-103, § 105, Oct. 11, 1967, 81 Stat. 257; Pub. L. 90-367, § 1, June 29, 1968, 82 Stat. 277; Pub. L. 90-623, § 1 (6), (24), Oct. 22, 1968, 82 Stat. 1312, 1314; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1184, 1221, 1222, and 1224.)

### § 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not

reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

- (1) each 52 calendar week of service in pay rates 1, 2, and 3;
- (2) each 104 calendar weeks of service in pay rates 4, 5, and 6;

or

- (3) each 156 calendar weeks of service in pay rates 7, 8, and 9; subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee, except a<sup>1</sup> administrative law judge appointed under section 3105 of this title, is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

(d) An increase in pay granted by statute is not an equivalent increase in pay within the meaning of subsection (a) of this section.

(e) This section does not apply to the pay of an individual covered by the merit pay system established under section 5402 of this title, or, appointed by the President, by and with the advice and consent of the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 469, amended Pub. L. 90-83, § 1(20), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1184, 1224, and 1225.)

### **§ 5336. Additional step-increases**

(a) Within the limit of available appropriations and under regulations prescribed by the Office of Personnel Management, the head of each agency may grant additional step-increases in recognition of high quality performance above that ordinarily found in the type of position concerned. However, an employee is eligible under this section for only one additional step-increase within any 52-week period.

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<sup>1</sup> Should be "an".

(b) A step-increase under this section is in addition to those under section 5335 of this title and is not an equivalent increase in pay within the meaning of section 5335 (a) of this title.

(c) This section does not apply to the pay of an individual covered by the merit pay system established under section 5402 of this title, or, appointed by the President, by and with the advice and consent of the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 469; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1184 and 1224.)

**§ 5337. Repealed. Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221**

**§ 5338. Regulations**

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 469; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## SUBCHAPTER IV—PREVAILING RATE SYSTEMS

### § 5341. Policy

It is the policy of Congress that rates of pay of prevailing rate employees be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and be based on principles that—

(1) there will be equal pay for substantially equal work for all prevailing rate employees who are working under similar conditions of employment in all agencies within the same local wage area;

(2) there will be relative differences in pay within a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions;

(3) the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area; and

(4) the level of rates of pay will be maintained so as to attract and retain qualified prevailing rate employees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 471, amended Pub. L. 90-83, § 1 (97), Sept. 11, 1967, 81 Stat. 220; Pub. L. 90-560, § 4, Oct. 12, 1968, 82 Stat. 997; Pub. L. 92-392, § 1, Aug. 19, 1972, 82 Stat. 564.)

### § 5342. Definitions; application

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency; but does not include—

- (A) a Government controlled corporation;
- (B) the Tennessee Valley Authority;
- (C) the Alaska Railroad;
- (D) the Virgin Islands Corporation;
- (E) the Atomic Energy Commission;
- (F) the Central Intelligence Agency;
- (G) the Panama Canal Company;
- (H) the National Security Agency, Department of Defense; or

(I) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title;

(2) “prevailing rate employee” means—

(A) an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement;

(B) an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement; and

(C) an employee of the Veterans' Canteen Service, Veterans' Administration, excepted from chapter 51 of this title by section 5102(c) (14) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or labor experience and knowledge as the paramount requirement; and

(3) "position" means the work, consisting of duties and responsibilities, assignable to a prevailing rate employee.

(b) (1) Except as provided by paragraphs (2) and (3) of this subsection, this subchapter applies to all prevailing rate employees and positions in or under any agency.

(2) The subchapter does not apply to employees and positions described by section 5102(c) of this title other than by—

(A) paragraph (7) of that section to the extent that such paragraph (7) applies to employees and positions other than employees and positions of the Bureau of Engraving and Printing; and

(B) paragraph (14) of that section.

(3) This subchapter, except section 5348, does not apply to officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c) (8) of this title.

(c) Each prevailing rate employee employed within any of the several States or the District of Columbia shall be a United States citizen or a bona fide resident of one of the several States or the District of Columbia unless the Secretary of Labor certifies that no United States citizen or bona fide resident of one of the several States or the District of Columbia is available to fill the particular position. (Pub. L. 89-554, Sept. 6, 1966, 89 Stat. 471, amended Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 564.)

### § 5343. Prevailing rate determinations; wage schedules; night differentials

(a) The pay of prevailing rate employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided by section 206(a)(1) of title 29. To carry out this subsection—

(1) the Office of Personnel Management shall define, as appropriate—

(A) with respect to prevailing rate employees other than prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

- (i) individual local wage areas for prevailing rate employees having regular wage schedules and rates; and
- (ii) wage areas for prevailing rate employees having special wage schedules and rates;

(B) with respect to prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

- (i) individual local wage areas for prevailing rate employees under such paragraphs having regular wage schedules and rates (but such boundaries shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed); and

- (ii) wage areas for prevailing rate employees under such paragraphs having special wage schedules and rates;

(2) the Office of Personnel Management shall designate a lead agency for each wage area;

(3) subject to paragraph (5) of this subsection, and subsections (c)(1)-(3) and (d) of this section, a lead agency shall conduct wage surveys, analyze wage survey data, and develop and establish appropriate wage schedules and rates for prevailing rate employees;

(4) the head of each agency having prevailing rate employees in a wage area shall apply, to the prevailing rate employees of that agency in that area, the wage schedules and rates established by the lead agency, or by the Office of Personnel Management, as appropriate, for prevailing rate employees in that area; and

(5) the Office of Personnel Management shall establish wage schedules and rates for prevailing rate employees who are United States citizens employed in any area which is outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) The Office of Personnel Management shall schedule full-scale wage surveys every 2 years and shall schedule interim surveys to be conducted between each 2 consecutive full-scale wage surveys. The Office may schedule more frequent surveys when conditions so suggest.

(c) The Office of Personnel Management, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the prevailing rate system. The regulations shall provide—

(1) that, subject to subsection (d) of this section, wages surveyed be those paid by private employers in the wage area for similar work performed by regular full-time employees, except that, for prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the wages surveyed shall be those paid by private employers to full-time employees in a representative number of retail, wholesale, service, and recreational establishments similar to those in which such prevailing rate employees are employed;

(2) for participation at all levels by representatives of organizations accorded recognition as the representatives of prevailing rate of employees in every phase of providing an equitable system for fixing and adjusting the rates of pay for prevailing rate employees, including the planning of the surveys, the drafting of specifications, the selection of data collectors, the collection and the analysis of the data, and the submission of recommendations to the head of the lead agency for wage schedules and rates and for special wage schedules and rates where appropriate;

(3) for requirements for the accomplishment of wage surveys and for the development of wage schedules and rates for prevailing rate employees, including, but not limited to—

(A) nonsupervisory and supervisory prevailing rate employees paid under regular wage schedules and rates;

(B) nonsupervisory and supervisory prevailing rate employees paid under special wage schedules and rates; and

(C) nonsupervisory and supervisory prevailing rate employees described under paragraphs (B) and (C) of section 5342(a)(2) of this title;

(4) for proper differentials, as determined by the Office, for duty involving unusually severe working conditions or unusually severe hazards;

(5) rules governing the administration of pay for individual employees on appointment, transfer, promotion, demotion, and other similar changes in employment status; and

(6) for a continuing program of maintenance and improvement designed to keep the prevailing rate system fully abreast of changing conditions, practices, and techniques both in and out of the Government of the United States.

(d) (1) A lead agency, in making a wage survey, shall determine whether there exists in the local wage area a number of comparable positions in private industry sufficient to establish wage schedules and rates for the principal types of positions for which the survey is made. The determination shall be in writing and shall take into consideration all relevant evidence, including evidence submitted by employee organizations recognized as representative of prevailing rate employees in that area.

(2) When a lead agency determines that there is a number of comparable positions in private industry insufficient to establish the wage schedules and rates, such agency shall establish those schedules and rates on the basis of—

(A) local private industry rates; and

(B) rates paid for comparable positions in private industry in the nearest wage area that such agency determines is most similar in the nature of its population, employment, manpower, and industry to the local wage area for which the wage survey is being made.

(e) (1) Each grade of a regular wage schedule for nonsupervisor prevailing rate employees shall have 5 steps with—

(A) the first step at 96 percent of the prevailing rate;

- (B) the second step at 100 percent of the prevailing rate;
- (C) the third step at 104 percent of the prevailing rate;
- (D) the fourth step at 108 percent of the prevailing rate; and
- (E) the fifth step at 112 percent of the prevailing rate.

(2) A prevailing rate employee under a regular wage schedule who has a work performance rating of satisfactory or better, as determined by the head of the agency, shall advance automatically to the next higher step within the grade at the beginning of the first applicable pay period following his completion of—

- (A) 26 calendar weeks of service in step 1;
- (B) 78 calendar weeks of service in step 2; and
- (C) 104 calendar weeks of service in each of steps 3 and 4.

(3) Under regulations prescribed by the Office of Personnel Management, the benefits of successive step increases shall be preserved for prevailing rate employees under a regular wage schedule whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(4) Supervisory wage schedules and special wage schedules authorized under subsection (c)(3) of this section may have single or multiple rates or steps according to prevailing practices in the industry on which the schedule is based.

(f) A prevailing rate employee is entitled to pay at his scheduled rate plus a night differential—

- (1) amounting to 7½ percent of that scheduled rate for regularly scheduled nonovertime work a majority of the hours of which occur between 3 p.m. and midnight; and
- (2) amounting to 10 percent of that scheduled rate for regularly scheduled nonovertime work a majority of the hours of which occur between 11 p.m. and 8 a.m.

A night differential under this subsection is a part of basic pay. (Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 471, amended Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 566; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 5344. Effective date of wage increases; retroactive pay**

(a) Each increase in rates of basic pay granted, pursuant to a wage survey, to prevailing rate employees is effective not later than the first day of the first pay period which begins on or after the 45th day, excluding Saturdays and Sundays, following the date the wage survey is ordered to be made.

(b) Retroactive pay is payable by reason of an increase in rates of basic pay referred to in subsection (a) of this section only when—

- (1) the individual is in the service of the Government of the United States, including service in the armed forces, or the government of the District of Columbia on the date of the issuance of the order granting the increase; or

- (2) the individual retired or died during the period beginning on the effective date of the increase and ending on the date of issuance of the order granting the increase, and only for services performed during that period.

For the purpose of this subsection, service in the armed forces includes the period provided by statute for the mandatory restoration of the individual to a position, in or under the Government of the United States or the government of the District of Columbia after he is relieved from training and service in the armed forces or discharged from hospitalization following that training and service. (Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 471, amended Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 568.)

**§ 5345. Repealed. Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221**

**§ 5346. Job grading system**

(a) The Office of Personnel Management, after consulting with the agencies and with employee organizations, shall establish and maintain a job grading system for positions to which this subchapter applies. In carrying out this subsection, the Office shall—

- (1) establish the basic occupational alignment and grade structure or structures for the job grading system;
- (2) establish and define individual occupations and the boundaries of each occupation;
- (3) establish job titles within occupations;
- (4) develop and publish job grading standards; and
- (5) provide a method to assure consistency in the application of job standards.

(b) The Office, from time to time, shall review such numbers of positions in each agency as will enable the Office to determine whether the agency is placing positions in occupations and grades in conformance with or consistently with published job standards. When the Office finds that a position is not placed in its proper occupation and grade in conformance with published standards or that a position for which there is no published standard is not placed in the occupation and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate occupation and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(c) On application, made in accordance with regulations prescribed by the Office, by a prevailing rate employee for the review of the action of an employing agency in placing his position in an occupation and grade for pay purposes, the Office shall—

- (1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of the position;
- (2) decide whether the position has been placed in the proper occupation and grade; and
- (3) approve, disapprove, or modify, in accordance with its decision, the action of the employing agency in placing the position in an occupation and grade.

The Office shall certify to the agency concerned its action under paragraph (3) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials. (Added Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 570; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 5347. Federal Prevailing Rate Advisory Committee**

(a) There is established a Federal Prevailing Rate Advisory Committee composed of—

(1) the Chairman, who shall not hold any other office or position in the Government of the United States or the government of the District of Columbia, and who shall be appointed by the Director of the Office of Personnel Management for a 4-year term;

(2) one member from the Office of the Secretary of Defense, designated by the Secretary of Defense;

(3) two members from the military departments, designated by the Director of the Office of Personnel Management;

(4) one member, designated by the Director of the Office of Personnel Management from time to time from an agency (other than the Department of Defense, a military department, and the Office of Personnel Management;

(5) an employee of the Office of Personnel Management, designated by the Director of the Office of Personnel Management; and

(6) five members, designated by the Director of the Office of Personnel Management, from among the employee organizations representing, under exclusive recognition of the Government of the United States, the largest numbers of prevailing rate employees.

(b) In designating members from among employee organizations under subsection (a)(6) of this section, the Director of the Office of Personnel Management shall designate, as nearly as practicable, a number of members from a particular employee organization in the same proportion to the total number of employee representatives appointed to the Committee under subsection (a)(6) of this section as the number of prevailing rate employees represented by such organization is to the total number of prevailing rate employees. However, there shall not be more than two members from any one employee organization nor more than four members from a single council, federation, alliance, association, or affiliation of employee organizations.

(c) Every 2 years the Director of the Office of Personnel Management shall review employee organization representation to determine adequate or proportional representation under the guidelines of subsection (b) of this section.

(d) The members from the employee organizations serve at the pleasure of the Director of the Office of Personnel Management.

(e) The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under this subchapter and, from time to time, advise the Office of Personnel Management thereon. Conclusions and recommendations of the Committee shall be formulated by majority vote. The Chairman of the Committee may vote only to break a tie of the Committee. The Committee shall make an annual report to the Office and the President for transmittal to Congress, including recommendations and other matters considered appropriate. Any member of the Committee may include in the annual report recommendations and other matters he considers appropriate.

(f) The Committee shall meet at the call of the Chairman. However, a special meeting shall be called by the Chairman if 5 members make a written request to the Chairman to call a special meeting to consider matters within the purview of the Committee.

(g) Members of the Committee described in paragraphs (2)-(5) of subsection (a) of this section serve without additional pay. The Chairman is entitled to a rate of pay equal to the maximum rate currently paid, from time to time, under the General Schedule. Members who represent employee organizations are not entitled to pay from the Government of the United States for services rendered to the Committee.

(h) The Office of Personnel Management shall provide such clerical and professional personnel as the Chairman of the Committee considers appropriate and necessary to carry out its functions under this subchapter. Such personnel shall be responsible to the Chairman of the Committee. (Added Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 571; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 5348. Crews of vessels

(a) Except as provided by subsections (b) and (c) of this section, the pay of officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry.

(b) Vessel employees of the Panama Canal Company may be paid in accordance with the wage practice of the maritime industry.

(c) Vessel employees in an area where inadequate maritime industry practice exists and vessel employees of the Corps of Engineers shall have their pay fixed and adjusted under the provisions of this subchapter other than this section, as appropriate. (Added Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 572.)

#### § 5349. Prevailing rate employees; legislative, judicial, Bureau of Engraving and Printing, and government of the District of Columbia

(a) The pay of employees, described under section 5102(c)(7) of this title, in the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Office of the Architect of the Capitol, the Bureau of Engraving and Printing, and the government of the District of Columbia, shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of section 5344, relating to retroactive pay, and subchapter VI of this chapter, relating to grade and pay retention, as the pay-fixing authority of each such agency may determine. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided for by section 206(a)(1) of title 29. If the pay-fixing authority concerned determines that the provisions of subchapter VI of this chapter should apply to any employee under his jurisdiction, then the employee concerned shall be deemed to have satisfied the requirements of section 536(1) of this title if the tenure of his appointment is substantially equivalent to the tenure of any appointment referred to in such paragraph.

(b) Subsection (a) of this section does not modify or otherwise affect section 5102(d) of this title, section 305 of title 44, and section 180 of title 31. (Added Pub. L. 92-392, § 1, Aug. 19, 1972, 86 Stat. 572; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1122.)

## SUBCHAPTER V—STUDENT-EMPLOYEES

### § 5351. Definitions

For the purpose of this subchapter—

(1) “agency” means an Executive agency, a military department, and the government of the District of Columbia; and

(2) “student-employee” means—

(A) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, and student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency; and

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 5352. Stipends

The head of each agency, and the District of Columbia Council with respect to the government of the District of Columbia, shall fix the stipends of its student-employees. The stipend may not exceed the applicable maximum prescribed by the Office of Personnel Management. (Pub. L. 89-554, Sept. 6, 1968, 80 Stat. 472, amended Pub. L. 90-623, § 1(7), Oct. 22, 1968, 82 Stat. 1312; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 5353. Quarters, subsistence, and laundry

An agency may provide living quarters, subsistence, and laundering to student-employees while at the hospitals, clinics, or laboratories. The reasonable value of the accommodations, when furnished, shall be deducted from the stipend of the student-employee. The head of the agency concerned, and the District of Columbia Council with respect to the government of the District of Columbia, shall fix the reasonable value of the accommodations at an amount not less than the lowest deduction applicable to regular employees at the same hospital clinic, or laboratory for similar accommodations. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472, amended Pub. L. 90-623, § 1(8), Oct. 22, 1968, 82 Stat. 1312.)

### § 5354. Effect of detail or affiliation; travel expenses

(a) Status as a student-employee is not terminated by a temporary detail to, or affiliation with another Government or non-Government institution to procure necessary supplementary training or experience pursuant to an order of the head of the agency. A student-employee may receive his stipend and other perquisites provided under this

subchapter from the hospital, clinic, or laboratory to which he is assigned or attached for not more than 60 days of a detail or affiliation for each training year, as defined by the head of the agency.

(b) When the detail or affiliation under subsection (a) of this section is to or with another Federal institution, the student-employee is entitled to necessary expenses of travel to and from the institution in accordance with subchapter I of chapter 57 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472.)

### **§ 5355. Effect on other statutes**

This subchapter does not limit the authority conferred on the Administrator of Veterans' Affairs by chapter 73 of title 38. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472.)

### **§ 5356. Appropriations**

Funds appropriated to an agency for expenses of its hospitals, clinics, and laboratories to which student-employees are assigned or attached are available to carry out the provisions of this subchapter. (Added Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472.)

## SUBCHAPTER VI—GRADE AND PAY RETENTION

### § 5361. Definitions

For the purpose of this subchapter—

(1) “employee” means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

(2) “agency” has the meaning given it by section 5102 of this title;

(3) “retained grade” means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

(4) “rate of basic pay” means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

(5) “covered pay schedule” means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the merit pay system under chapter 54 of this title;

(6) “position subject to this subchapter” means any position under a covered pay schedule; and

(7) “reduction-in-force procedures” means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1218.)

### § 5362. Grade retention following a change of positions or reclassification

#### (a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b) (1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section.

(2) for purposes of applying any reduction-in-force procedures,

(3) for purposes of determining whether the employee is covered by the merit pay system established under section 5402 of this title, or

(4) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1219.)

### § 5363. Pay retention

(a) Any employee—

(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5303 of this title; or

(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

(b) For the purpose of subsection (a) of this section, "allowable former rate of basic pay" means the lower of—

(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

(c) The preceding provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is entitled by operation of this subchapter or chapter 51, 53, or 54 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

(3) is demoted for personal cause or at the employee's request.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1219.)

#### § 5364. Remedial actions

Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

(1) to report to the Office information with respect to vacancies (including impending vacancies);

(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1220.)

#### § 5365. Regulations

(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

(2) to individuals to whom such provisions do not otherwise apply; and

(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1220.)

#### § 5366. Appeals

(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which

was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

(2) any termination of any such benefits under this subchapter, shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221.)

## SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

### § 5371. Scientific and professional positions

Subject to the approval of the Office of Personnel Management, the head of the agency concerned shall fix the annual rate of basic pay for scientific and professional positions established under section 3104 of this title at not less than the minimum rate for GS-16 nor more than the maximum rate for GS-18. (Pub. L. 98-554, Sept. 6, 1966, 80 Stat. 473; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221 and 1224.)

### § 5372. Administrative law judges

Administrative law judges appointed under section 3105 of this title are entitled to pay prescribed by the Office of Personnel Management independently of agency recommendations or ratings and in accordance with subchapter III of this chapter and chapter 51 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473; amended Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 183, 1221 and 1224.)

### § 5373. Limitation on pay fixed by administrative action

Except as provided by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the maximum rate for GS-18. This section does not impair the authorities provided by—

- (1) section 121 of title 2, Canal Zone Code (76A Stat. 15);
- (2) sections 248, 481, and 1819 of title 12;
- (3) section 831b of title 16; or
- (4) sections 403a-403c, 403e-403h, and 403j of title 50.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221.)

### § 5374. Miscellaneous positions in the executive branch

The head of the agency concerned shall fix the annual rate of basic pay for each position in the executive branch specifically referred to in, or covered by, a conforming change in statute made by section 305 of the Government Employees Salary Reform Act of 1964 (78 Stat. 422), or other position in the executive branch for which the annual pay is fixed at a rate of \$18,500 or more under special provision of statute enacted before August 14, 1964, which is not placed in a level of the Executive Schedule set forth in subchapter II of this chapter, at a rate equal to the pay rate of a grade and a step of the General Schedule set forth in section 5332 of this title. The head of the agency concerned shall report each action taken under this section to the Office of Personnel Management and publish a notice thereof in the Federal

Register, except when the President determines that the report and publication would be contrary to the interest of national security. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 478; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221 and 1224.)

### **§ 5375. Police force of National Zoological Park**

The Secretary of the Smithsonian Institution shall fix the per annum rates of basic pay of positions on the police force of the National Zoological Park in accordance with the following provisions:

- (1) Private—not more than the rate for GS-7, Step 5;
- (2) Sergeant—not more than the rate for GS-8, Step 5;
- (3) Lieutenant—not more than the rate for GS-9, Step 5;
- (4) Captain—not more than the rate for GS-10, Step 5.

(Added Pub. L. 91-34, § 1(a), June 30, 1969, 83 Stat. 41, amended Pub. L. 94-183, § 2(20), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1221.)

## SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

### § 5381. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, and “senior executive” have the meanings set for in section 3132(a) of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1171.)

### § 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable for GS-16 of the General Schedule and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitations of section 5308 or 5373 of this title.

(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate. The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305(a)(3) or (e)(1) of this title.

(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1171.)

### § 5383. Setting individual senior executive pay

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, and 5384 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.

(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1171.)

#### **§ 5384. Performance awards in the Senior Executive Service**

(a) (1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

(b) (1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

(2) The amount of a performance award under this section shall be determined by the agency head but may not exceed 20 percent of the career appointee's rate of basic pay.

(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.

(c) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

(d) The Office of Personnel Management may issue guidance to agencies concerning the proportion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1172.)

#### **§ 5385. Regulations**

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1172.)

## CHAPTER 54—MERIT PAY AND CASH AWARDS

SEC.

- 5401. Purpose.
- 5402. Merit pay system.
- 5403. Cash award program.
- 5404. Report.
- 5405. Regulations.

### § 5401. Purpose

- (a) It is the purpose of this chapter to provide for—
  - (1) a merit pay system which shall—
    - (A) within available funds, recognize and reward quality performance by varying merit pay adjustments;
    - (B) use performance appraisals as the basis for determining merit pay adjustments;
    - (C) within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and
    - (D) regulate the costs of merit pay by establishing appropriate control techniques; and
  - (2) a cash award program which shall provide cash awards for superior accomplishment and special service.
- (b) (1) Except as provided in paragraph (2) of this subsection, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS-13, 14, or 15 of the General Schedule described in section 5104 of this title.
  - (2) (A) Upon application under subparagraph (C) of this paragraph, the President may, in writing, exclude an agency or any unit of an agency from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from—
    - (i) the recent establishment of the agency or unit, or the implementation of a new program,
    - (ii) an emergency situation, or
    - (iii) any other situation or circumstance.
  - (B) Any exclusion under this paragraph shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency or unit to be excluded and the reasons therefor.
  - (C) An application for exclusion under this paragraph of an agency or any unit of an agency shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency or unit should be excluded from this chapter. The Office shall review the application and reasons, undertake such other review as it considers appropriate to determine whether the agency or unit should be excluded from the coverage of this chapter, and upon completion of its review, recommend to the President whether the agency or unit should be so excluded.

(D) Any agency or unit which is excluded pursuant to this paragraph shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

(E) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this paragraph be revoked. The President may at any time revoke, in writing, any exclusion under this paragraph. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1180.)

### § 5402. Merit pay system

(a) In accordance with the purpose set forth in section 5401(a)(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under chapter 53 of this title.

(b) (1) Under regulations prescribed by the Office, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

(2) Determinations to provide pay increases under this subsection—

(A) may take into account individual performance and organizational accomplishment, and

(B) shall be based on factors such as—

(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(ii) cost efficiency;

(iii) timeliness of performance; and

(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible;

(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

(D) shall be made in accordance with regulations issued by the Office which relate to the distribution of increases authorized under this subsection.

(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of the fiscal year by the Office on the basis of the amount estimated by the Office to be necessary to reflect—

(A) within-grade step increases and quality step increases which would have been paid under subchapter III of chapter 53 of this title during the fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered; and

(B) adjustments under section 5305 of this title which would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered, less an

amount reflecting the adjustment under subsection (c) (1) of this section in rates of basic pay payable to the employees for the fiscal year.

(c) (1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the greater of—

(A) one-half of the percentage of the adjustment in the annual rate of pay which corresponds to the percentage generally applicable to positions not covered by the merit pay system in the same grade as the position; or

(B) such greater amount of such percentage of such adjustment in the annual rate of pay as may be determined by the Office.

(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

(d) Under regulations prescribed by the Office, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1181.)

### § 5403. Cash award program

(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or serv-

ice in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000.

(2) If the head of any agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1182.)

#### **§ 5404. Report**

The Office of Personnel Management shall include in each annual report required by section 1308(a) of this title a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

(1) an analysis of the cost and effectiveness of the merit pay system and the cash award program; and

(2) a statement of the agencies and units excluded from the coverage of this chapter under section 5401(b)(2) of this title, the reasons for which each exclusion was made, and whether the exclusion continues to be warranted. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1183.)

#### **§ 5405. Regulations**

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1183.)

## **CHAPTER 55—PAY ADMINISTRATION**

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## SUBCHAPTER I—GENERAL PROVISIONS

### § 5501. Disposition of money accruing from lapsed salaries or unused appropriations for salaries

Money accruing from lapsed salaries or from unused appropriations for salaries shall be covered into the Treasury of the United States. An individual who violates this section shall be removed from the service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 475.)

### § 5502. Unauthorized office; prohibition on use of funds

(a) Payment for services may not be made from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service, or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law.

(b) Except as otherwise provided by statute, public money and appropriations may not be used for pay or allowance for an individual employed by an official of the United States retired from active service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 475).

### § 5503. Recess appointments

(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appointee has been confirmed by the Senate. This subsection does not apply—

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

(b) A nomination to fill a vacancy referred to by paragraph (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 475.)

### § 5504. Biweekly pay periods; computation of pay

(a) The pay period for an employee covers two administrative worksheets. For the purpose of this subsection, “employee” means—

(1) an employee in or under an Executive agency;

(2) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(3) an individual employed by the government of the District of Columbia;

but does not include—

(A) an employee on the Isthmus of Panama in the service of the Canal Zone Government or the Panama Canal Company; or

(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this section.

(b) For pay computation purposes affecting an employee, the annual rate of basic pay established by or under statute is deemed payment for employment during 52 basic administrative workweeks of 40 hours. When it is necessary for computation of pay under this subsection to convert an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate, the following rules govern:

(1) To derive an hourly rate, divide the annual rate by 2,080.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

Rates are computed to the nearest cent, counting one-half and over as a whole cent. For the purpose of this subsection, "employee" means—

(A) an employee in or under an Executive agency;

(B) an employee in or under the judicial branch;

(C) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(D) an individual employed by the government of the District of Columbia;

but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title.

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an executive agency. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 475, amended Pub. L. 90-83, § 1(21), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173 and 1224.)

### § 5505. Monthly pay periods; computation of pay

The pay period for an individual in the service of the United States whose pay is monthly or annual covers one calendar month, and the following rules for division of time and computation of pay for services performed govern:

(1) A month's pay is one-twelfth of a year's pay.

(2) A day's pay is one-thirtieth of a month's pay.

(3) The 31st day of a calendar month is ignored in computing pay, except that one day's pay is forfeited for one day's unauthorized absence on the 31st day of a calendar month.

(4) For each day of the month elapsing before entering the service, one day's pay is deducted from the first month's pay of the individual.

This section does not apply to an employee whose pay is computed under section 5504(b) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 476.)

#### **§ 5506. Computation of extra pay based on standard or daylight saving time**

When an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia is entitled to extra pay for services performed between or after certain named hours of the day or night, the extra pay is computed on the basis of either standard or daylight saving time, depending on the time observed by law, custom, or practice where the services are performed. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 476.)

#### **§ 5507. Officer affidavit; condition to pay**

An officer required by section 3332 of this title to file an affidavit may not be paid until the affidavit has been filed. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

#### **§ 5508. Officer entitled to leave; effect on pay status**

An officer in the executive branch and an officer of the government of the District of Columbia to whom subchapter I of chapter 63 of this title applies are not entitled to the pay of their offices solely because of their status as officers. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

#### **§ 5509. Appropriations**

There are authorized to be appropriated sums necessary to carry out the provisions of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

## SUBCHAPTER II—WITHHOLDING PAY

### § 5511. Withholding pay; employees removed for cause

(a) Except as provided by subsection (b) of this section, the earned pay of an employee removed for cause may not be withheld or confiscated.

(b) If an employee indebted to the United States is removed for cause, the pay accruing to the employee shall be applied in whole or in part to the satisfaction of any claim or indebtedness due the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

### § 5512. Withholding pay; individuals in arrears

(a) The pay of an individual in arrears to the United States shall be withheld until he has accounted for and paid into the Treasury of the United States all sums for which he is liable.

(b) When pay is withheld under subsection (a) of this section, the General Accounting Office, on request of the individual, his agent, or his attorney, shall report immediately to the Attorney General the balance due; and the Attorney General, within 60 days, shall order suit to be commenced against the individual. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477, amended Pub. L. 92-310, § 202, June 6, 1972, 86 Stat. 202.)

### § 5513. Withholding pay; credit disallowed or charge raised for payment

When the General Accounting Office, on a statement of the account of a disbursing or certifying official of the United States, disallows credit or raises a charge for a payment to an individual in or under an Executive agency otherwise entitled to pay, the pay of the payee shall be withheld in whole or in part until full reimbursement is made under regulations prescribed by the head of the Executive agency from which the payee is entitled to receive pay. This section does not repeal or modify existing statutes relating to the collection of the indebtedness of an accountable, certifying, or disbursing official. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

### § 5514. Installment deduction for indebtedness because of erroneous payment

(a) When the head of the agency concerned or his designee determines that an employee, a member of the armed forces, or a Reserve of the armed forces, is indebted to the United States because of an erroneous payment made by the agency to or on behalf of the individual, the amount of the indebtedness may be collected in monthly installments, or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay account of the individual. The deductions may be made only from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case

of an individual not entitled to basic pay, other authorized pay. Collection shall be made over a period not greater than the anticipated period of active duty or employment, as the case may be. The amount deducted for any period may not exceed two-thirds of the pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated active duty or employment. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from later payments of any nature due the individual from the agency concerned.

(b) The head of each agency shall prescribe regulations, subject to the approval of the Director of the Bureau of the Budget, to carry out this section and section 581d of title 31. Regulations prescribed by the Secretaries of the military departments shall be uniform for the military services insofar as practicable.

(c) Subsection (a) of this section does not modify existing statutes which provide for forfeiture of pay or allowances. This section and section 581d of title 31 do not repeal, modify, or amend section 4837(d) or 9837(d) of title 10 or section 1007 (b), (c) of title 37. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 477.)

#### **§ 5515. Crediting amounts received for jury or witness service**

An amount received by an employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia for service as a juror or witness during a period for which he is entitled to leave under section 6322(a) of this title, or is performing official duty under section 6322(b) of this title, shall be credited against pay payable to him by the United States or the District of Columbia with respect to that period. (Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 478, amended Pub. L. 91-563, § 2(a), Dec. 19, 1970, 84 Stat. 1476.)

#### **§ 5516. Withholding District of Columbia income taxes**

(a) The Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the Commissioner of the District of Columbia within 120 days of a request for agreement from the Commissioner. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of subchapter II of chapter 15 of title 47, District of Columbia Code, in the case of employees of the agency who are subject to income taxes imposed by that subchapter and whose regular place of employment is within the District of Columbia. The agreement may not apply to pay of an employee who is not a resident of the District of Columbia as defined in subchapter II of chapter 15 of title 47, District of Columbia Code. In the case of pay for service as a member of the armed forces, the second sentence of this subsection shall be applied by substituting "who are residents of the District of Columbia" for "whose regular place of employment is within the District of Columbia." For the purpose of this subsection, "employee" has the meaning given it by section 1551c(z) of title 47, District of Columbia Code.

(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 478, amended Pub. L. 90-623, § 1(9), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 94-455, § 1207(a)(2), Oct. 4, 1976, 90 Stat. 1705.)

### § 5517. Withholding State income taxes

#### (a) When a State statute—

(1) provides for the collection of a tax either by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State, or by granting to employers generally the authority to withhold sums from the pay of employees if any employee voluntarily elects to have such sums withheld; and

(2) imposes the duty or grants the authority to withhold generally with respect to the pay of employees who are residents of the State;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with which the agreement is made. In the case of pay for service as a member of the armed forces, the preceding sentence shall be applied by substituting "who are residents of the State with which the agreement is made" for "whose regular place of Federal employment is within the State with which the agreement is made."

(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a State for services performed in withholding State income taxes from the pay of the employees of the agency.

(c) For the purpose of this section, "State" means a State or territory or possession of the United States.

(d) For the purpose of this section and sections 5516 and 5520, the terms "serve as a member of the armed forces" and "serve as a member of the Armed Forces" do not include—

(1) participation in exercises or the performance of duty under section 502 of title 32, United States Code, by a member of the National Guard; and

(2) participation in scheduled drills or training periods, or service on active duty for training, under section 270(a) of title 10, United States Code, by a member of the Ready Reserve.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 478, amended Pub. L. 94-455, § 1207(a)(1), (b), and (c), Oct. 4, 1976, 90 Stat. 1705.)

**§ 5518. Deductions for State retirement systems; National Guard employees**

When—

(1) a State statute provides for the payment of employee contributions to a State employee retirement system or to a State sponsored plan providing retirement, disability, or death benefits, by withholding sums from the pay of State employees and making returns of the sums withheld to State authorities or to the person or organization designated by State authorities to receive sums withheld for the program; and

(2) individuals employed by the Army National Guard and the Air National Guard, except employees of the National Guard Bureau, are eligible for membership in a State employee retirement system or other State sponsored plan;

the Secretary of Defense, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Department of Defense shall comply with the requirements of State statute as to the individuals named by paragraph (2) of this section who are eligible for membership in the State employee retirement system. The disbursing officials paying these individuals shall withhold and pay to the State employee retirement system or to the person or organization designated by State authorities to receive sums withheld for the program the employee contributions for these individuals. For the purpose of this section, "State" means a State or territory or possession of the United States including the Commonwealth of Puerto Rico. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 479.)

**§ 5519. Crediting amounts received for certain Reserve or National Guard service**

An amount (other than a travel, transportation, or per diem allowance) received by an employee or individual for military service as a member of the Reserve or National Guard for a period for which he is entitled to leave under section 6323 (c) or (d) of this title shall be credited against the pay payable to the employee or individual with respect to his civilian position for that period. (Added Pub. L. 90-588, § 2(b), Oct. 17, 1968, 82 Stat. 1152.)

**§ 5520. Withholding of city or county income or employment taxes**

(a) When a city or county ordinance—

(1) provides for the collection of a tax by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to a designated city or county officer, department, or instrumentality; and

(2) imposes the duty to withhold generally on the payment of compensation earned within the jurisdiction of the city or county in the case of employees whose regular place of employment is within such jurisdiction;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the city or county within 120 days of a request for agreement by the proper city or county

official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the city or county ordinance in the case of any employee of the agency who is subject to the tax and (i) whose regular place of Federal employment is within the jurisdiction of the city or county with which the agreement is made or (ii) is a resident of such city or county. The agreement may not apply to pay for service as a member of the Armed Forces. The agreement may not permit withholding of a city or county tax from the pay of an employee who is not a resident of, or whose regular place of Federal employment is not within, the State in which that city or county is located unless the employee consents to the withholding.

(b) This section does not give the consent of the United States to the application of an ordinance which imposes more burdensome requirements on the United States than on other employers or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a city or county for services performed in withholding city or county income or employment taxes from the pay of employees of the agency.

(c) For the purpose of this section—

(1) "city" means any unit of general local government which—  
    (A) is classified as a municipality by the Bureau of the Census, or

    (B) is a town or township which, in the determination of the Secretary of the Treasury—

        (i) possesses powers and performs functions comparable to those associated with municipalities,

        (ii) is closely settled, and

        (iii) contains within its boundaries no incorporated places, as defined by the Bureau of the Census,

within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(2) "county" means any unit of local general government which is classified as a county by the Bureau of the Census and within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(3) "ordinance" means an ordinance, order, resolution, or similar instrument which is duly adopted and approved by a city or county in accordance with the constitution and statutes of the State in which it is located and which has the force of law within such city or county; and

(4) "agency" means—

    (A) an Executive agency;

    (B) the judicial branch; and

    (C) the United States Postal Service.

(Pub. L. 93-340, § 1, July 10, 1974, 88 Stat. 294, amended Pub. L. 94-358, § 1, July 12, 1976, 90 Stat. 910; Pub. L. 95-30, May 23, 1977, 91 Stat. 157; Pub. L. 95-365, Sept. 15, 1978, 92 Stat. 599.)

## SUBCHAPTER III--ADVANCEMENT ALLOCATION, AND ASSIGNMENT OF PAY

### § 5521. Definitions

For the purpose of this subchapter—

- (1) “agency” means—
  - (A) an Executive agency;
  - (B) the judicial branch;
  - (C) the Library of Congress;
  - (D) the Government Printing Office; and
  - (E) the government of the District of Columbia;
- (2) “employee” means an individual employed in or under an agency;
- (3) “head of each agency” means—
  - (A) the director of the Administrative Office of the United States Courts with respect to the judicial branch; and
  - (B) the Commissioner of the District of Columbia with respect to the government of the District of Columbia; and
- (4) “United States”, when used in a geographical sense, means the several States and the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 479, amended Pub. L. 90-623, § 1(10), Oct. 22, 1969, 82 Stat. 1312.)

### § 5522. Advance payments; rates; amounts recoverable

(a) The head of each agency may provide for the advance payment of the pay, allowances, and differentials, or any of them, covering a period of not more than 30 days, to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency) whose evacuation (or that of his dependents or immediate family, as the case may be) from a place inside or outside the United States is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family.

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, the advance payment of pay, allowances, and differentials is at rates currently authorized with respect to the employee on the date the advance payment is made under agency procedures governing advance payments under this subsection. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the evacuation order.

(c) An advance of funds under subsection (a) of this section is recoverable by the Government of the United States or the government of the District of Columbia, as the case may be, from the employee or his estate by—

(1) setoff against accrued pay, amount of retirement credit, or other amount due to the employee from the Government of the United States or the government of the District of Columbia; and  
(2) such other method as is provided by law.

The head of the agency concerned may waive in whole or in part a right of recovery of an advance of funds under subsection (a) of this section, if it is shown that the recovery would be against equity and good conscience or against the public interest. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 480.)

### § 5523. Duration of payments; rates; active service period

(a) The head of each agency may provide for—

(1) the payment of monetary amounts covering a period of not more than 60 days to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency)—

(A) whose evacuation from a place inside or outside the United States is ordered for military or other reasons which create imminent danger to the life of the employee; and

(B) who is prevented, by circumstances beyond his control and beyond the control of the Government of the United States or the government of the District of Columbia, or both, as the case may be, from performing the duties of the position which he held immediately before issuance of the evacuation order; and

(2) the termination of payment of the monetary amounts.

The President, with respect to the Executive agencies, may extend the 60-day period for not more than 120 additional days if he determines that the extension of the period is in the interest of the United States.

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, each payment under this section is at rates of pay, allowances, and differentials, or any of them, currently authorized with respect to the employee on the date payment is made under agency procedures governing payments under this section. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the evacuation order. An employee in an Executive agency may be granted such additional allowance payments as the President determines necessary to offset the direct added expenses incident to the evacuation.

(c) Each period for which payment of amounts is made under this section to or for the account of an employee is deemed, for all purposes with respect to the employee, a period of active service, without break in service, performed by the employee in the employment of the Government of the United States or the government of the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 480.)

### § 5524. Review of accounts

The head of each agency shall provide for—

(1) the review of the account of each employee of the agency in receipt of payments under section 5522 or 5523 of this title, or both, as the case may be; and

(2) the adjustment of the amounts of the payments on the basis of—

(A) the rates of pay, allowances, and differentials to which the employee would have been entitled under applicable statute other than this subchapter for the respective periods covered by the payments, if he had performed active service under the terms of his appointment during each period in the position he held immediately before the issuance of the applicable evacuation order; and

(B) such additional amounts as the employee is authorized to receive in accordance with a determination of the President under section 5523(b) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 481.)

#### **§ 5525. Allotment and assignment of pay**

The head of each agency may establish procedures under which each employee of the agency is permitted to make allotments and assignments of amounts out of his pay for such purpose as the head of the agency considers appropriate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 481.)

#### **§ 5526. Funds available on reimbursable basis**

Funds available to an agency for payment of pay, allowances, and differentials to or for the accounts of employees of the agency are available on a reimbursable basis for payment of pay, allowances, and differentials to or for the accounts of employees of another agency under this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 481.)

#### **§ 5527. Regulations**

(a) To the extent practicable in the public interest, the President shall coordinate the policies and procedures of the respective Executive agencies under this subchapter.

(b) The President, with respect to the Executive agencies, the head of the agency concerned, with respect to the appropriate agency outside the executive branch, and the District of Columbia Council, with respect to the government of the District of Columbia, shall prescribe and issue, or provide for the formulation and issuance of, regulations necessary and appropriate to carry out the provisions, accomplish the purposes, and govern the administration of this subchapter.

(c) The head of each Executive agency may prescribe and issue regulations, not inconsistent with the regulations of the President issued under subsection (b) of this section, necessary and appropriate to carry out his functions under this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 481, amended Pub. L. 90-623, § 1(11), Oct. 22, 1968, 82 Stat. 1312.)

**SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT****§ 5531. Definitions**

For the purpose of sections 5532 and 5533 of this title—

(1) “member” has the meaning given such term by section 101 (23) of title 37;

(2) “position” means a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a non-appropriated fund instrumentality under the jurisdiction of the armed forces) or in the government of the District of Columbia; and

(3) “retired or retainer pay” means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 482 amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1150.)

**§ 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay**

(a) For the purpose of this section, “period for which he receives pay” means the full calendar period for which a retired officer of a regular component of a uniformed service receives the pay of a position when employed on a full-time basis, but only the days for which he actually receives that pay when employed on a part-time or intermittent basis.

(b) A retired officer of a regular component of a uniformed service who holds a position is entitled to receive the full pay of the position, but during the period for which he receives pay, his retired or retainer pay shall be reduced to an annual rate equal to the first \$2,000 of the retired or retainer pay plus one-half of the remainder, if any. In the operation of the formula for the reduction of retired or retainer pay under this subsection, the amount of \$2,000 shall be increased, from time to time, by appropriate percentage, in direct proportion to each increase in retired or retainer pay under section 1401a(b) of title 10 to reflect changes in the Consumer Price Index.

(c)(1) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay (reduced as provided under subsection (b) of this section), exceeds the rate of basic pay then cur-

rently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under paragraph (2) of this subsection. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

(2) The amount of each reduction under paragraph (1) of this subsection allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period (reduced as provided under subsection (b) of this section), except that the amount of the reduction may not result in—

(A) the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule; or

(B) the amount of retired pay or retainer pay being reduced to an amount less than the amount deducted from the retired or retainer pay as a result of participation in any survivor's benefits in connection with the retired or retainer pay or veterans insurance programs.

(d) The reduction in retired or retainer pay required by this section does not apply to a member or former member of a uniformed service who is receiving retired or retainer pay—

(1) whose retired or retainer pay is computed, in whole or in part, based on disability—

(A) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(B) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 301 of title 38; or

(2) employed on a temporary (full-time or part-time) basis, any other part-time basis, or an intermittent basis, for the first 30-day period for which he receives pay.

The exemption from reduction in retired or retainer pay under paragraph (2) of this subsection does not apply longer than—

(i) the first 30-day period for which he receives pay under one appointment from the position in which he is employed, if he is serving under not more than one appointment; and

(ii) the first period for which he receives pay under more than one appointment, in a fiscal year, which consists in the aggregate of 30 days, from all positions in which he is employed, if he is serving under more than one appointment in that fiscal year.

(e) The Office of Personnel Management may, during the 5-year period after the effective date of the Civil Service Reform Act of 1978 authorize exceptions to the restrictions in subsections (a), (b), and (c) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. An exception granted by the office with respect to any individual shall terminate upon a break in service of 3 days or more. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 482; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1150.)

**§ 5533. Dual pay from more than one position; limitations; exceptions**

(a) Except as provided by subsections (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

(c)(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) or (4) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds \$7,724 a year (\$10,540, in the case of pay disbursed by the Secretary of the Senate).

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is disbursed by the Clerk of the House of Representatives, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, "gross pay" means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual.

(4) Paragraph (1) of this subsection does not apply to pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same day.

(d) Subsection (a) of this section does not apply to—

(1) pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same hours of the same day;

(2) pay consisting of fees paid on other than a time basis;

(3) pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;

(4) pay paid by the Tennessee Valley Authority to an employee performing part-time or intermittent work in addition to his normal duties when the Authority considers it to be in the interest of efficiency and economy;

(5) pay received by an individual holding a position—

(A) the pay of which is paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(B) under the Architect of the Capitol;

- (6) pay paid by the United States Coast Guard to an employee occupying a part-time position of lamplighter; and
- (7) pay within the purview of any of the following statutes:
- (A) section 162 of title 2;
  - (B) section 23(b) of title 13;
  - (C) section 327 of title 15;
  - (D) section 907 of title 20;
  - (E) section 873 of title 33;
  - (F) section 631 or 631a of title 31, District of Columbia Code; or
  - (G) section 102 of title 2, Canal Zone Code.

(e) (1) This section does not apply to an individual employed under sections 174j-1 to 174j-7 or 174k of title 40.

(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 483, amended Pub. L. 90-57, § 105(h), Sept. 11, 1967, 81 Stat. 143; Pub. L. 90-206, § 214(o), Dec. 16, 1967, 81 Stat. 637; Pub. L. 91-510, § 477(d), Oct. 26, 1970, 84 Stat. 1195; Pub. L. 93-140, § 23, Oct. 26, 1973, 87 Stat. 508; Pub. L. 93-145, § 101, Nov. 1, 1973, 87 Stat. 532; Pub. L. 94-183, § 2(21), Dec. 31, 1975, 89 Stat. 1058; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 5534. Dual employment and pay of Reserves and National Guardsmen**

A Reserve of the armed forces or member of the National Guard may accept a civilian office or position under the Government of the United States or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances as a Reserve or member of the National Guard. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 484.)

#### **§ 5534a. Dual employment and pay during terminal leave from uniformed services**

A member of a uniformed service who has performed active service and who is on terminal leave pending separation from, or release from active duty in, that service under honorable conditions may accept a civilian office or position in the Government of the United States, its territories or possessions, or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances from the uniformed service for the unexpired portion of the terminal leave. (Added Pub. L. 90-83, § 1 (22), Sept. 11, 1967, 81 Stat. 199.)

#### **§ 5535. Extra pay for details prohibited**

(a) An officer may not receive pay in addition to the pay for his regular office for performing the duties of a vacant office as authorized by sections 3345-3347 of this title.

(b) An employee may not receive—

- (1) additional pay or allowances for performing the duties of another employee; or
- (2) pay in addition to the regular pay received for employment held before his appointment or designation as acting for or instead of an occupant of another position or employment.

This subsection does not prevent a regular and permanent appointment by promotion from a lower to a higher grade of employment. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 484.)

### § 5536. Extra pay for extra services prohibited

An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 484.)

### § 5537. Fees for jury and witness service

(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia may not receive fees for service—

- (1) as a juror in a court of the United States or the District of Columbia; or
- (2) as a witness on behalf of the United States or the District of Columbia.

(b) An official of a court of the United States or the District of Columbia may not receive witness fees for attendance before a court, commissioner, or magistrate where he is officiating.

(c) For the purpose of this section, "court of the United States" has the meaning given it by section 451 of title 28 and includes the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 484, amended Pub. L. 90-623, § 1(12), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 91-563, § 3(a), Dec. 19, 1970, 84 Stat. 1477.)

## SUBCHAPTER V—PREMIUM PAY

### § 5541. Definitions

For the purpose of this subchapter—

- (1) “agency” means—  
(A) an Executive agency;  
(B) a military department;  
(C) an agency in the judicial branch;  
(D) the Library of Congress;  
(E) the Botanic Garden;  
(F) the Office of the Architect of the Capitol; and  
(G) the government of the District of Columbia; and

- (2) “employee” means—  
(A) an employee in or under an Executive agency;  
(B) an individual employed by the government of the District of Columbia; and  
(C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

- (i) a justice or judge of the United States;  
(ii) the head of an agency other than the government of the District of Columbia;  
(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;  
(iv) a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protection Service;  
(v) a student-employee as defined by section 5351 of this title;  
(vi) Repealed. Pub. L. 91-375, § 6(c)(16), Aug. 12, 1970, 84 Stat. 776;  
(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;  
(viii) an employee of the Tennessee Valley Authority;  
(ix) an individual to whom section 1291(a) of title 50, appendix, applies;  
(x) an employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;  
(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, a vessel employee of the Department of the Interior, or a vessel employee of the Panama Canal Company;

(xiii) a "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20;

(xiv) a "Foreign Service officer" within the meaning of section 401 of the Foreign Service Act of 1946;

(xv) a "Foreign Service information officer" as provided for by the first section of the Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968; or

(xvi) member of the Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 485, amended Pub. L. 90-83, § 1(4), Sept. 11, 1967, 81 Stat. 196, Pub. L. 91-375, § 6(c)(16), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92-392, § 4, Aug. 19, 1972, 86 Stat. 573; Pub. L. 94-183, § 2(22), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-105, Aug. 15, 1977, 91 Stat. 855; Pub. L. 95-426, Oct. 7, 1978, 92 Stat. 974; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173.)

#### § 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS-10, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of the minimum rate of basic pay for GS-10, and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS-14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(b) For the purpose of this subchapter—

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official duty station of an employee is not hours of employment unless—

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively.

(Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 485, amended Pub. L. 90-83, § 1(24), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, § 222(a), Dec. 16, 1967, 81 Stat. 641; Pub. L. 90-556, § 1, Oct. 10, 1968, 82 Stat. 969; Pub. L. 92-194, § 1, Dec. 15, 1971, 85 Stat. 648.)

#### § 5543. Compensatory time off

(a) The head of an agency may—

(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS-10 shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title.

(b) The Architect of the Capitol may grant an employee paid on an annual basis compensatory time off from duty instead of overtime pay for overtime work. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 486, amended Pub. L. 90-83, § 1(25), Sept. 11, 1967, 81 Stat. 200.)

#### § 5544. Wage-board overtime and Sunday rates; computation

(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty,

exclusive of eating and sleeping time, in excess of 40 a week. The overtime rate of pay is computed as follows:

(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to an additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively.

(b) An employee under the Office of the Architect of the Capitol who is paid on a daily or hourly basis and who is not subject to chapter 51 and subchapter III of chapter 53 of this title is entitled to overtime pay for overtime work in accordance with subsection (a) of this section. The overtime hourly rate of pay is computed in accordance with subsection (a) (1) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 486, amended Pub. L. 90-83, § 1(26)(A), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, § 222(d), Dec. 16, 1967, 81 Stat. 641; Pub. L. 92-392, § 5, Aug. 19, 1972, 86 Stat. 573.)

#### **§ 5545. Night, standby, irregular, and hazardous duty differential**

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

(1) periods of absence with pay during these hours due to holidays; and

(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 180 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 (or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot to be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 per centum nor more than 25 per centum, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.

(d) The Office shall establish a schedule or schedules of pay differentials for irregular or intermittent duty involving unusual physical hardship or hazard. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof; and

(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 487, amended Pub. L. 90-83, § 1 (27), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90-206, § 217, Dec. 16, 1967, 81 Stat. 638; Pub. L. 90-556, § 2, Oct. 10, 1968, 82 Stat. 969; Pub. L. 91-231, § 8, Apr. 15, 1970, 84 Stat. 198; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 5546. Pay for Sunday and holiday work**

(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay.

(b) An employee who performs work on a holiday designated by Federal statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the District of Columbia Council, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not—

(1) in excess of 8 hours; or

(2) overtime work is defined by section 5542(a) of this title.

(c) An employee who is required to perform any work on a designated holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee who performs overtime work as defined by section 5542(a) of this title on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with section 5542(a) of this title.

(e) Premium pay under this section is in addition to premium pay which may be due for the same work under section 5545 (a) and (b) of this title, providing premium pay for nightwork. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488, amended Pub. L. 90-83, § 1(29) Sept. 11, 1967, 81 Stat. 201; Pub. L. 90-623, § 1(13), Oct. 22, 1968, 82 Stat. 1312.)

**§ 5547. Limitation on premium pay**

An employee may be paid premium pay under section 5542, 5545 (a)-(c), and 4456 (a), (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488, amended Pub. L. 90-83, § 1(31), Sept. 11, 1967, 81 Stat. 201.)

**§ 5548. Regulations**

(a) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except section 5545(d), insofar as this subchapter affects employees in or under an Executive agency.

(b) The Office shall prescribe regulations necessary for the administration of sections 5545(d) and 5550 of this title. (Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 488, amended Pub. L. 90-83, § 1(29), Sept. 11, 1967, 81 Stat. 201; Pub. L. 92-392, § 12, Aug. 19, 1972, 86 Stat. 575; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 5549. Effect on other statutes**

This subchapter does not prevent payment for overtime services or for Sunday or holiday work under any of the following statutes—

(1) section 394 of title 7;

(2) sections 1353a and 1353b of title 8;

(3) sections 261, 267, 1450, 1451, 1451a and 1452 of title 19;

- (4) section 382b of title 46; and
- (5) section 154(f)(3) of title 47.

However, an employee may not receive premium pay under this subchapter for the same services for which he is paid under one of these statutes. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 488.)

#### § 5550. Pay for Sunday and overtime work; employees of non-appropriated fund instrumentalities

A "prevailing rate employee" described in paragraph (B) of section 5342(a)(2) of this title—

(1) if his regular work schedule includes an 8-hour period of service, a part of which is on Sunday, is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service;

(2) is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week, computed in accordance with paragraph (1), (2), or (3), as applicable, of section 5544(a) of this title.

However, any such employee who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. (Added Pub. L. 92-392, § 10, Aug. 19, 1972, 86 Stat. 574.)

#### § 5550a. Compensatory time off for religious observances

(a) Not later than 30 days after the date of the enactment of this section, the Civil Service Commission<sup>1</sup> shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Commission<sup>2</sup>) shall prescribe the regulations referred to in subsection (a) of this section.

(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved. (Pub. L. 95-390, § 401(a), Sept. 29, 1978, 92 Stat. 762.)

<sup>1</sup> Should be "Office of Personnel Management".

<sup>2</sup> Should be "Office".

## SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

### **§ 5551. Lump-sum payment for accumulated and accrued leave on separation**

(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is separated from the service or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave.

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by section 6301(2)(x)–(xiii) of this title, is entitled immediately before the date he is excepted under that section shall be liquidated by a lump-sum payment in accordance with subsection (a) of this section or subchapter VIII of this chapter, except that the payment is based on the rate of pay which he was receiving immediately before the date on which section 6301(2)(x)–(xii) of this title became applicable to him. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488, amended Pub. L. 93–181, § 1, Dec. 14, 1973, 87 Stat. 705; Pub. L. 95–519, Oct. 25, 1978, 92 Stat. 1819.)

### **§ 5552. Lump-sum payment for accumulated and accrued leave on entering active duty; election**

An employee as defined by section 2105 of this title or an individual employed by a territory or possession of the United States or the government of the District of Columbia who enters on active duty in the armed forces is entitled to—

(1) receive, in addition to his pay and allowances from the armed forces, a lump-sum payment for accumulated and current accrued annual or vacation leave in accordance with section 5551 of this title; or

(2) elect to have the leave remain to his credit until his return from active duty.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 489.)

## SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

### § 5561. Definitions

For the purpose of this subchapter—

(1) “agency” means an Executive agency and a military department;

(2) “employee” means an employee in or under an agency who is a citizen or national of the United States or an alien admitted to the United States for permanent residence, but does not include a part-time or intermittent employee or native labor casually hired on an hourly or daily basis. However, such an employee who enters a status listed in paragraph (5) (A)–(E) of this section—

(A) inside the continental United States; or

(B) who is a resident at or in the vicinity of his place of employment in a territory or possession of the United States or in a foreign country and who was not living there solely as a result of his employment;

is an employee for the purpose of this subchapter only on a determination by the head of the agency concerned that this status is the proximate result of employment by the agency;

(3) “dependent” means—

(A) a wife;

(B) an unmarried child (including an unmarried dependent stepchild or adopted child) under 21 years of age;

(C) a dependent mother or father;

(D) a dependent designated in official records; and

(E) an individual determined to be dependent by the head of the agency concerned or his designee;

(4) “active service” means active Federal service by an employee;

(5) “missing status” means the status of an employee who is in active service and is officially carried or determined to be absent in a status of—

(A) missing;

(B) missing in action;

(C) interned in a foreign country;

(D) captured, beleaguered, or besieged by a hostile force;

or

(E) detained in a foreign country against his will;

but does not include the status of an employee for a period during which he is officially determined to be absent from his post of duty without authority; and

(6) “pay and allowances” means—

(A) basic pay;

- (B) special pay;
- (C) incentive pay;
- (D) basic allowance for quarters;
- (E) basic allowance for subsistence; and
- (F) station per diem allowances for not more than 90 days.

(Pub. L. 80-554, Sept. 6, 1966, 80 Stat. 489.)

### § 5562. Pay and allowances; continuance while in a missing status; limitations

(a) An employee in a missing status is entitled to receive or have credited to his account, for the period he is in that status, the same pay and allowances to which he was entitled at the beginning of that period or may become entitled thereafter. Notwithstanding any other provision of law, an employee in a missing status on or after January 1, 1965, is entitled—

(1) to payment for annual leave which accrued to his account on or after January 1, 1965, but which was forfeited under section 6304 of this title because he was unable to use that leave by virtue of his missing status; or

(2) to have all of that leave restored to him and credited to a separate leave account in accordance with the provisions of section 6304(d)(2) of this title.

An employee shall elect in writing, within 90 days immediately following the date of enactment of this sentence or within 90 days immediately following the termination of his missing status, whichever is later, whether he desires payment for the leave under clause (1) of this subsection or credit of the leave under clause (2) of this subsection. Payment under clause (1) of this subsection shall be at the employee's rate of basic pay in effect at the time the leave was forfeited.

(b) Entitlement to pay and allowances under subsection (a) of this section ends on the date of—

(1) receipt by the head of the agency concerned of evidence that the employee is dead; or

(2) death prescribed or determined under section 5565 of this title.

That entitlement does not end—

(A) on the expiration of the term of service or employment of an employee while he is in a missing status; or

(B) earlier than the dates prescribed in paragraphs (1) and (2) of this subsection if the employee dies while he is in a missing status.

(c) An employee who is officially determined to be absent from his post of duty without authority is indebted to the United States for payments of amounts credited to his account under subsection (a) of this section for the period of that absence.

(d) When an employee in a missing status is continued in that status under section 5565 of this title, he continues to be entitled to have pay and allowances credited under subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 490, amended Pub. L. 93-181, § 7(a), Dec. 14, 1973, 87 Stat. 707.)

**§ 5563. Allotments; continuance, suspension, initiation, resumption, or increase while in a missing status; limitations**

(a) An allotment (including one for the purchase of United States saving bonds) made by an employee before he was in a missing status may be continued for the period he is in that status, notwithstanding the end of the period for which the allotment was made.

(b) In the absence of an allotment or when an allotment is insufficient for a purpose authorized by the head of the agency concerned, he or his designee may authorize such a new or increased allotment as circumstances warrant, which is payable for the period the employee concerned is in a missing status.

(c) All allotments from the pay and allowances of an employee in a missing status may not total more than the amount of pay and allowances he is permitted to allot under regulations prescribed by the head of the agency concerned.

(d) A premium paid by the United States on insurance issued on the life of an employee, which is unearned because it covers a period after his death, reverts to the appropriation of the agency concerned.

(e) Subject to subsections (f) and (g) of this section, the head of the agency concerned or his designee may direct the initiation, continuance, discontinuance, increase, decrease, suspension, or resumption of an allotment from the pay and allowances of an employee in a missing status when that action is in the interests of the employee, his dependents, or the United States.

(f) When the head of the agency concerned officially reports that an employee in a missing status is alive, an allotment under subsections (a)–(d) of this section may be paid, subject to section 5562 of this title, until the date the head of the agency concerned receives evidence that the employee is dead or has returned to the controllable jurisdiction of the agency concerned.

(g) When an employee in a missing status is continued in that status under section 5565 of this title, an allotment under subsections (a)–(d) of this section may be continued, increased, or initiated.

(h) When the head of the agency concerned considers it essential for the well-being and protection of the dependents of an employee in active service (other than an employee in a missing status), he may, with or without the consent of the employee and subject to termination on specific request of the employee—

(1) direct the payment of a new allotment from the pay of the employee;

(2) increase or decrease the amount of an allotment made by the employee; and

(3) continue payment of an allotment of the employee which has expired.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 490.)

**§ 5564. Travel and transportation; dependents; household and personal effects; motor vehicles; sale of bulky items; claims for proceeds; appropriation chargeable**

(a) For the purpose of this section, "household and personal effects" and "household effects" may include, in addition to other authorized

weight allowances, one privately owned motor vehicle which may be shipped at United States expense.

(b) Transportation (including packing, crating, draying, temporarily storing, and unpacking of household and personal effects) may be provided for the dependents and household and personal effects of an employee in active service (without regard to pay grade) who is officially reported as dead, injured, or absent for more than 29 days in a status listed in section 5561(5)(A)-(E) of this title to—

(1) the official residence of record for the employee;

(2) the residence of his dependent, next of kin, or other person entitled to the effects under regulations prescribed by the head of the agency concerned; or

(3) another location determined in advance or later approved by the head of the agency concerned or his designee on request of the employee (if injured) or his dependent, next of kin, or other person described in paragraph (2) of this subsection.

(c) When an employee described in subsection (b) of this section is in an injured status, transportation of dependents and household and personal effects may be provided under this section only when prolonged hospitalization or treatment is anticipated.

(d) Transportation on request of a dependent may be authorized under this section only when there is a reasonable relationship between the circumstances of the dependent and the destination requested.

(e) Instead of providing transportation for dependents under this section, when the travel has been completed the head of the agency concerned may authorize—

(1) reimbursement for the commercial cost of the transportation; or

(2) a monetary allowance, instead of transportation, as authorized by statute for the whole or that part of the travel for which transportation in kind was not furnished.

(f) The head of the agency concerned may store the household and personal effects of an employee described in subsection (b) of this section until proper disposition can be made. The cost of the storage and transportation (including packing, crating, draying, temporarily storing, and unpacking) of household and personal effects shall be charged against appropriations currently available.

(g) When the head of the agency concerned determines that an emergency exists and that a sale would be in the best interests of the United States, he may provide for the public or private sale of motor vehicles and other bulky items of the household and personal effects of an employee described in subsection (b) of this section. Before a sale, and if practicable, a reasonable effort shall be made to determine the desires of interested persons. The net proceeds from the sale shall be sent to the owner or other person entitled thereto under regulations prescribed by the head of the agency concerned. If there is no owner or other person entitled thereto, or if the owner or other person or their addresses are not ascertained within 1 year from the date of sale, the net proceeds may be covered into the Treasury of the United States as miscellaneous receipts.

(h) A claim for net proceeds covered into the Treasury under subsection (g) of this section may be filed with the General Accounting Office by the owner, his heir or next of kin, or his legal representative at any time before the end of 5 years from the date the proceeds are covered into the Treasury. When a claim is filed, the General Accounting Office shall allow or disallow it. A claim that is allowed shall be paid from the appropriation for refunding money erroneously received and covered. If a claim is not filed before the end of 5 years from the date the proceeds are covered into the Treasury, it is barred from being acted on by the General Accounting Office or the courts.

(i) This section does not amend or repeal—

- (1) section 2575, 2733, 4712, 4713, 6522, 9712, or 9713 of title 10;
- (2) section 507 of title 14; or
- (3) chapter 171 of title 28.

(Pub. L. 89-554, Sept. 6, 1966; 80 Stat. 491, amended Pub. L. 90-83, § 1(33), Sept. 11, 1967, 81 Stat. 201.)

#### § 5565. Agency review

(a) When an employee has been in a missing status almost 12 months and no official report of his death or the circumstances of his continued absence has been received by the head of the agency concerned, he shall have the case fully reviewed. After that review and the end of 12 months in a missing status, or after any later review which shall be made when warranted by information received or other circumstances, the head of the agency concerned or his designee may—

- (1) direct the continuance of his missing status, if there is a reasonable presumption that the employee is alive; or
- (2) make a finding of death.

(b) When a finding of death is made under subsection (a) of this section, it shall include the date death is presumed to have occurred for the purpose of the ending of crediting pay and allowances and settlement of accounts. That date is—

- (1) the day after the day on which the 12 months in a missing status ends; or
- (2) a day determined by the head of the agency concerned or his designee when the missing status has been continued under subsection (a) of this section.

(c) For the purpose of determining status under this section, a dependent of an employee in active service is deemed an employee. A determination under this section made by the head of the agency concerned or his designee is conclusive on all other agencies of the United States. This section does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 492.)

#### § 5566. Agency determinations

(a) The head of the agency concerned or his designee may make any determination necessary to administer this subchapter, and when so made it is conclusive as to—

- (1) death or finding of death;
- (2) the fact of dependency under this subchapter;

(3) any other status covered by this subchapter;

(4) an essential date, including one on which evidence or information is received by the head of the agency concerned; and

(5) whether information received concerning an employee is to be construed and acted on as an official report of death.

(b) When the head of the agency concerned receives information that he considers to conclusively establish the death of an employee, he shall take action thereon as an official report of death, notwithstanding an earlier action relating to death or other status of the employee. After the end of 12 months in a missing status prescribed by section 5565 of this title, the head of the agency concerned or his designee shall make a finding of death when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that an employee in a missing status is dead.

(c) The head of the agency concerned or his designee may determine the entitlement of an employee to pay and allowances under this subchapter, including credits and charges in his account, and that determination is conclusive. An account may not be charged or debited with an amount that an employee captured, beleaguered, or besieged by a hostile force may receive or be entitled to receive from, or have placed to his credit by, the hostile force as pay, allowances, or other compensation.

(d) When circumstances warrant the reconsideration of a determination made under this subchapter, the head of the agency concerned or his designee may change or modify it.

(e) When the account of an employee has been charged or debited with an allotment paid under this subchapter, the amount so charged or debited shall be recrated to the account of the employee if the head of the agency concerned or his designee determines that the payment was induced by fraud or misrepresentation to which the employee was not a party.

(f) Except an allotment for an unearned insurance premium, an allotment paid from the pay and allowances of an employee for the period he is in a missing status may not be collected from the allottee as an overpayment when payment was caused by delay in receiving evidence of death. An allotment paid for a period after the end, under this subchapter or otherwise, of entitlement to pay and allowances may not be collected from the allottee or charged against the pay of a deceased employee when payment was caused by delay in receiving evidence of death.

(g) The head of the agency concerned or his designee may waive the recovery of an erroneous payment or overpayment of an allotment to a dependent if he considers recovery is against equity and good conscience.

(h) For the purpose of determining status under this section, a dependent of an employee in active service is deemed an employee. A determination under this section made by the head of the agency concerned or his designee is conclusive on all other agencies of the United States. This section does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 493.)

**§ 5567. Settlement of accounts**

(a) The head of the agency concerned or his designee may settle the accounts of—

(1) an employee for whose account payment has been made under sections 5562, 5563, and 5565 of this title; and

(2) a survivor of a casualty to a ship, station, or military installation which results in the loss or destruction of disbursing records.

That settlement is conclusive on the accounting officials of the United States in settling the accounts of disbursing officials.

(b) Payment or settlement of an account made pursuant to a report, determination, or finding of death may not be recovered or reopened because of a later report or determination which fixes a date of death. However, an account shall be reopened and settled on the basis of a date of death so fixed which is later than that used as a basis for earlier settlement.

(c) In settling the accounts of a disbursing official, he is entitled to credit for an erroneous payment or overpayment made by him in carrying out this subchapter, except section 5568, if there is no fraud or criminality by him. Recovery may not be made from an individual who authorizes a payment under this subchapter, except section 5568, if there is no fraud or criminality by him. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 494.)

**§ 5568. Income tax deferment**

Notwithstanding other statutes, any Federal income tax return of, or the payment of any Federal income tax by, an employee who, at the time of the return or payment would otherwise become due, is in a missing status does not become due until the earlier of the following dates:

(1) the fifteenth day of the third month in which he ceased (except because of death or incompetency) being in a missing status, unless before the end of that fifteenth day he is again in a missing status; or

(2) the fifteenth day of the third month after the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

That due date is prescribed subject to the power of the Secretary of the Treasury or his delegate to extend the time for filing the return or paying the tax, as in other cases, and to assess and collect the tax as provided by sections 6851, 6861, and 6871 of title 26 in cases in which the assessment or collection is jeopardized and in cases of bankruptcy or receivership. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 494.)

## SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

### § 5581. Definitions

For the purpose of this subchapter—

- (1) “employee” means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual employed by the government of the District of Columbia;

but does not include an employee of—

(i) a Federal land bank;

(ii) a Federal intermediate credit bank;

(iii) a regional bank for cooperatives; or

(iv) the Senate within the purview of section 36a of title 2;

(2) “money due” means the pay and allowances due on account of the services of a deceased employee for the Government of the United States or the government of the District of Columbia. It includes, but is not limited to—

(A) per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith for which reimbursement is due;

(B) allowances on change of official station;

(C) quarters and cost-of-living allowances and overtime or premium pay;

(D) amounts due for payment of cash awards for employees’ suggestions;

(E) amounts due as refund of pay deductions for United States savings bonds;

(F) payment for accumulated and current accrued annual or vacation leave equal to the pay the deceased employee would have received had he lived and remained in the service until the end of the period of annual or vacation leave;

(G) amounts of checks drawn for pay and allowances which were not delivered by the Government to the employee during his lifetime;

(H) amounts of unnegotiated checks returned to the Government because of the death of the employee; and

(I) retroactive pay under section 5344(a)(2) of this title.

It does not include benefits, refunds, or interest payable under subchapter III of chapter 83 of this title applicable to the service of the deceased employee, or amounts the disposition of which is otherwise expressly prescribed by Federal statute.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 495.)

**§ 5582. Designation of beneficiary; order of precedence**

(a) The employing agency shall notify each employee of his right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated. An employee may change or revoke a designation at any time under such regulations as the Comptroller General of the United States may prescribe.

(b) In order to facilitate the settlement of the accounts of deceased employees, money due an employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

First, to the beneficiary or beneficiaries designated by the employee in writing received in the employing agency before his death.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed legal representative of the estate of the employee.

Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his death.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 495.)

**§ 5583. Payment of money due; settlement of accounts**

(a) Under such regulations as the Comptroller General of the United States may prescribe, the employing agency shall pay money due a deceased employee to the beneficiary designated by the employee under section 5582(b) of this title, or, if none, to the widow or widower of the employee.

(b) Except as the Comptroller General may by regulation otherwise authorize or direct, accounts not payable under subsection (a) of this section are payable on settlement of the General Accounting Office. However—

(1) accounts of employees of the government of the District of Columbia shall be paid by the District of Columbia;

(2) accounts of employees of the Canal Zone Government on the Isthmus of Panama shall be paid by the Canal Zone Government; and

(3) accounts of employees of Government corporations or mixed ownership Government corporations may be paid by the corporations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 496.)

**§ 5584. Claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses**

(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances, other than travel and trans-

portation expenses and allowances and relocation expenses payable under section 5724a of this title, on or after July 1, 1960, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

- (1) the Comptroller General of the United States; or
- (2) the head of the agency when—
  - (A) the claim is in an amount aggregating not more than \$500;
  - (B) the claim is not the subject of an exception made by the Comptroller General in the amount of any accountable official; and
  - (C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(b) The Comptroller General or head of the agency, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;

(2) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office, after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered or three years immediately following October 21, 1968, whichever is later;

(3) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment of allowances was discovered or three years immediately following October 2, 1972, whichever is later; or

(4) in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered or 3 years immediately following the date on which this clause (4) is enacted into law, whichever is later.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for that refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

(d) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes.

(f) This section does not effect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

(g) For the purpose of this section, "agency" means—

- (1) an Executive agency;
- (2) the Government Printing Office;
- (3) the Library of Congress;
- (4) the Office of the Architect of the Capitol; and
- (5) the Botanic Garden.

(Added Pub. L. 90-616, § 1(a), Oct. 21, 1968, 82 Stat. 1212, amended Pub. L. 92-453, § 3(1), Oct. 2, 1972, 86 Stat. 760; Pub. L. 93-359, § 1, July 25, 1974, 88 Stat. 393.)

## SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

**§§ 5591–5594. Repealed.** Pub. L. 90–83, § 1(34)(B), Sept. 11, 1967, 81 Stat. 201

### § 5595. Severance pay

(a) For the purpose of this section—

(1) “agency” means—

(A) an Executive agency;

(B) the Library of Congress;

(C) the Government Printing Office; and

(D) the government of the District of Columbia; and

(2) “employee” means—

(A) an individual employed in or under an agency; and

(B) an individual employed by a county committee established under section 590h(b) of title 16;

but does not include—

(i) an employee other than a member of the Senior Executive Service whose rate of basic pay is fixed at a rate provided for one of the levels of the Executive Schedule or is in excess of the maximum rate for GS–18;

(ii) an employee serving under an appointment with a definite time limitation, except one so appointed for fulltime employment without a break in service of more than 3 days following service under an appointment without time limitation;

(iii) an alien employee who occupies a position outside the several States, the District of Columbia, and the Canal Zone;

(iv) an employee who is subject to subchapter III of chapter 83 of this title or any other retirement statute or retirement system applicable to an employee as defined by section 2105 of this title or a member of a uniformed service and who at the time of separation from the service, has fulfilled the requirements for immediate annuity under such a statute or system;

(v) an employee who, at the time of separation from the service, is receiving compensation under subchapter I of chapter 81 of this title, other than one receiving this compensation concurrently with pay or on account of the death of another individual;

(vi) an employee who, at the time of separation from the service, is entitled to receive other severance pay from the Government;

(vii) an employee of the Tennessee Valley Authority; or

(viii) such other employee as may be excluded by regulations of the President or such other officer or agency as he may designate.

(b) Under regulations prescribed by the President or such officer or agency as he may designate, an employee who—

(1) has been employed currently for a continuous period of at least 12 months; and

(2) is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency; is entitled to be paid severance pay in regular pay periods by the agency from which separated.

(c) Severance pay consists of—

(1) a basic severance allowance computed on the basis of 1 week's basic pay at the rate received immediately before separation for each year of civilian service up to and including 10 years for which severance pay has not been received under this or any other authority and 2 weeks' basic pay at that rate for each year of civilian service beyond 10 years for which severance pay has not been received under this or any other authority; and

(2) an age adjustment allowance computed on the basis of 10 percent of the total basic severance allowance for each year by which the age of the recipient exceeds 40 years at the time of separation.

Total severance pay under this section may not exceed 1 year's pay at the rate received immediately before separation. For the purpose of this subsection, basic pay includes premium pay under section 5545(c)(1) of this title.

(d) If an employee is reemployed by the Government of the United States or the government of the District of Columbia before the end of the period covered by payments of severance pay, the payments shall be discontinued beginning with the date of reemployment and the service represented by the unexpired portion of the period shall be recredited to the employee for use in any later computations of severance pay. For the purpose of subsection (b)(1) of this section, reemployment that causes severance pay to be discontinued is deemed employment continuous with that serving as the basis for severance pay.

(e) If the employee dies before the end of the period covered by payments of severance pay, the payments of severance pay with respect to the employee shall be continued as if the employee were living and shall be paid on a pay period basis to the survivor of the employee in accordance with section 5582(b) of this title.

(f) Severance pay under this section is not a basis for payment, and may not be included in the basis for computation, of any other type of United States or District of Columbia Government benefits. A period covered by severance pay is not a period of United States or District of Columbia Government service or employment.

(g) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this section to an individual named by subsection (a)(2)(B) of this section. (Added Pub. L. 90-83, § 1(34)(C), Sept. 11, 1967, 81 Stat. 201; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173.)

#### § 5596. Back pay due to unjustified personnel action

(a) For the purpose of this section, "agency" means—

(1) an Executive agency;

(2) the Administrative Office of the United States Courts;

- 
- (3) the Library of Congress;
  - (4) the Government Printing Office, and
  - (5) the government of the District of Columbia.

(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(3) For the purpose of this subsection, "grievance" and "collective bargaining agreement" have the meanings set forth in section 7103 of this title, "unfair labor practice" means an unfair labor practice described in section 7116 of this title, and "personnel action" includes the omission or failure to take an action or confer a benefit. (Added Pub. L. 90-83, § 1(34)(C), Sept. 11, 1967, 81 Stat. 203, amended Pub. L. 94-172, § 1(a), Dec. 23, 1975, 89 Stat. 1025; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1216.)

## **CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE**

### **SUBCHAPTER 1—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES**

**SEC.**

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## SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

### § 5701. Definitions

For the purpose of this subchapter—

(1) “agency” means—

- (A) an Executive agency;
- (B) a military department;
- (C) an office, agency, or other establishment in the legislative branch;
- (D) an office, agency, or other establishment in the judicial branch; and
- (E) the government of the District of Columbia;

but does not include—

(i) a Government controlled corporation;

(ii) a Member of Congress; or

(iii) an office or committee of either House of Congress or of the two Houses;

(2) “employee” means an individual employed in or under an agency including an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis and an individual serving without pay or at \$1 a year;

(3) “subsistence” means lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler;

(4) “per diem allowance” means a daily flat rate payment instead of actual expenses for subsistence and fees or tips to porters and stewards;

(5) “Government” means the Government of the United States and the government of the District of Columbia; and

(6) “continental United States” means the several States and the District of Columbia, but does not include Alaska or Hawaii.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 498, amended Pub. L. 94-22, § 2, May 19, 1975, 89 Stat. 84.)

### § 5702. Per diem; employee traveling on official business

(a) Under regulations prescribed under section 5707 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$35, and (2) a per diem allowance for travel outside the continental United States, that may not exceed the rate established by the President, or his designee, for each locality where travel is to be performed. For travel consuming less than a full day, such rate may be allocated proportionally.

(b) Under regulations prescribed under section 5707 of this title, an employee who, while traveling on official business away from his designated post of duty or, in the case of an individual described under section 5703 of this title, his home or regular place of business, becomes incapacitated by illness or injury not due to his own misconduct, is entitled to the per diem allowance and appropriate transportation expenses to his designated post of duty, or home or regular place of business, as the the case may be.

(c) Under regulations prescribed under section 5707 of this title, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$50 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (A) due to the unusual circumstances of the travel assignment, or (B) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title.

(d) Under regulations prescribed under section 5707 of this title, for travel outside the continental United States, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$21 for each day in a travel status outside the continental United States plus the locality per diem rate prescribed for such travel.

(e) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 498, amended Pub. L. 91-114, § 1, Nov. 10, 1969, 83 Stat. 190; Pub. L. 94-22, § 3, May 19, 1975, 89 Stat. 84.)

#### **§ 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay**

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or a \$1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 99, amended Pub. L. 91-114, § 2, Nov. 10, 1969, 83 Stat. 190; Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85.)

#### **§ 5704. Mileage and related allowances**

(a) Under regulations prescribed under section 5707 of this title, an employee who is engaged on official business for the Government is entitled to not in excess of—

- (1) 11 cents a mile for the use of a privately owned motorcycle;
- (2) 20 cents a mile for the use of a privately owned automobile;  
or

(3) 24 cents a mile for the use of a privately owned airplane; instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to

the Government. A determination of such advantage is not required when payment on a mileage basis is limited to the cost of travel by common carrier including per diem. Notwithstanding the preceding provisions of this subsection, in any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.

(b) In addition to the mileage allowance authorized under subsection (a) of this section, the employee may be reimbursed for—

- (1) parking fees;
- (2) ferry fees;
- (3) bridge, road, and tunnel costs; and
- (4) airplane landing and tie-down fees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 500, amended Pub. L. 94-22, § 5, May 19, 1975, 89 Stat. 85.)

### § 5705. Advancements and deductions

An agency may advance, through the proper disbursing official, to an employee entitled to per diem or mileage allowances under this subchapter, a sum considered advisable with regard to the character and probable duration of the travel to be performed. A sum advanced and not used for allowable travel expenses is recoverable from the employee or his estate by—

- (1) setoff against accrued pay, retirement credit, or other amount due the employee;
- (2) deduction from an amount due from the United States; and
- (3) such other method as is provided by law.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 500.)

### § 5706. Allowable travel expenses

Except as otherwise permitted by this subchapter or by statutes relating to members of the uniformed services, only actual and necessary travel expenses may be allowed to an individual holding employment or appointment under the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 500.)

### § 5707. Regulations and reports

(a) The Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter, except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government.

(b) (1) The Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretary of Transportation, the Secretary of Defense, and representatives of organizations of employees of the Government, shall conduct periodic investigations of the cost of travel and the operation of privately owned vehicles to employees while engaged on official business, and shall report the results of such investigations to Congress at least once a year. In conducting the investigations, the Administrator shall review and analyze among other factors—

- (A) depreciation of original vehicle cost;

- (B) gasoline and oil (excluding taxes);
- (C) maintenance, accessories, parts, and tires;
- (D) insurance; and
- (E) State and Federal taxes.

(2) The Administrator shall issue regulations under this section which shall prescribe mileage allowances which shall not exceed the amounts set forth in section 5704(a) of this title and which reflect the current costs, as determined by the Administrator, of operating privately owned motorcycles, automobiles, and airplanes. At least once each year after the issuance of the regulations described in the preceding sentence, the Administrator shall determine, based upon the results of his investigation, specific figures, each rounded to the nearest one-half cent, of the average, actual cost a mile during the period for the use of a privately owned motorcycle, automobile, and airplane. The Administrator shall report such figures to Congress not later than five working days after he makes his determination. Each such report shall be printed in the Federal Register. The mileage allowances contained in regulations prescribed under this section shall be adjusted within thirty days following the submission of that report to the figures so determined and reported by the Administrator (Pub. L. 89-534, Sept. 6, 1966, 80 Stat. 500, amended Pub. L. 94-22, § 6(a), May 19, 1975, 89 Stat. 85.)

#### **§ 5708. Effect on other statutes**

This subchapter does not modify or repeal—

- (1) any statute providing for the traveling expenses of the President;
- (2) any statute providing for mileage allowances for Members of Congress;
- (3) any statute fixing or permitting rates higher than the maximum rates established under this subchapter; or
- (4) any appropriation statute item for examination of estimates in the field.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 500.)

#### **§ 5709. Air evacuation patients: furnished subsistence**

Notwithstanding any other provision of law, and under regulations prescribed under section 5707 of this title, an employee and his dependents may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States. (Added, Pub. L. 91-481, § 1(1), Oct. 21, 1970, 84 Stat. 1081.)

## SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

### § 5721. Definitions

For the purpose of this subchapter—

- (1) “agency” means—
  - (A) an Executive agency;
  - (B) a military department;
  - (C) a court of the United States;
  - (D) the Administrative Office of the United States Courts;
  - (E) the Library of Congress;
  - (F) the Botanic Garden;
  - (G) the Government Printing Office; and
  - (H) the government of the District of Columbia;

but does not include a Government controlled corporation;

(2) “employee” means an individual employed in or under an agency;

(3) “continental United States” means the several States and the District of Columbia, but does not include Alaska or Hawaii;

(4) “Government” means the Government of the United States and the government of the District of Columbia; and

(5) “appropriation” includes funds made available by statute under section 849 of title 31.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 500.)

### § 5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States

(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; and

(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States.

(b) An agency may pay expenses under subsection (a) (1) of this section only after the individual selected for appointment agrees in writing to remain in the Government service for a minimum period of—

(1) one school year as determined under chapter 25 of title 20, if selected for appointment to a teaching position, except as a substitute, in the Department of Defense under that chapter; or

(2) 12 months after his appointment, if selected for appointment to any other position; unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the United States for the expenses is recoverable from the individual as a debt due the United States.

(c) An agency may pay expenses under subsection (a) (2) of this section only after the individual has served for a minimum period of—

(1) one school year as determined under chapter 25 of title 20, if employed in a teaching position, except as a substitute, in the Department of Defense under that chapter; or

(2) not less than one nor more than 3 years prescribed in advance by the head of the agency, if employed in any other position;

unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience.

(d) This section does not apply to appropriations for the Foreign Service of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 501.)

### **§ 5723. Travel and transportation expenses of new appointees and student trainees; manpower shortage positions**

(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses of a new appointee, or a student trainee when assigned on completion of college work, to a position in the United States for which the Office of Personnel Management determines there is a manpower shortage or of a new appointee to the Senior Executive Service; and

(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title;

from his place of residence at the time of selection or assignment to his duty station. If the travel and transportation expenses of a student trainee were paid when he was appointed, they may not be paid when he is assigned after completion of college work. Travel expenses payable under this subsection may include the per diem and mileage allowances authorized for employees by subchapter I of this chapter. Advances of funds may be made for the expenses authorized by this subsection to the extent authorized by section 5724(f) of this title.

(b) An agency may pay travel and transportation expenses under subsection (a) of this section only after the individual selected or assigned agrees in writing to remain in the Government service for 12 months after his appointment or assignment, unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the United States for the expenses is recoverable from the individual as a debt due the United States.

(c) An agency may pay travel and transportation expenses under subsection (a) of this section whether or not the individual selected has been appointed at the time of the travel.

(d) The Office may delegate its authority to determine positions for which there is a manpower shortage for the purpose of this section.

(e) This section does not impair or otherwise affect the authority of an agency under existing statute to pay travel and transportation expenses of individuals named by subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 502; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173 and 1124.)

**§ 5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis**

(a) Under such regulations as the President may prescribe and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds—

(1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family, or a commutation thereof under section 5704 of this title; and

(2) the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 11,000 pounds net weight.

(b) Under such regulations as the President may prescribe, an employee who transports a house trailer or mobile dwelling inside the continental United States, inside Alaska, or between the continental United States and Alaska, for use as a residence, and who otherwise would be entitled to transportation of household goods and personal effects under subsection (a) of this section, is entitled, instead of that transportation, to—

(1) a reasonable allowance not in excess of 20 cents a mile for transportation of the house trailer or mobile dwelling, if the trailer or dwelling is transported by the employee; or

(2) commercial transportation of the house trailer or mobile dwelling, at Government expense, or reimbursement to the employee therefor, including the payment of necessary tolls, charges, and permit fees, if the trailer or dwelling is not transported by the employee.

However, payment under this subsection may not exceed the maximum payment to which the employee otherwise would be entitled under subsection (a) of this section for transportation and temporary storage of his household goods and personal effects in connection with this transfer.

(c) Under such regulations as the President may prescribe, an employee who transfers between points inside the continental United States, instead of being paid for the actual expenses of transporting, packing, crating, temporarily storing, draying, and unpacking of household goods and personal effects, shall be reimbursed on a commuted basis at the rates per 100 pounds that are fixed by zones in the regulations. The reimbursement may not exceed the amount which would be allowable for the authorized weight allowance. However, under regulations prescribed by the President, payment of actual expenses may be made when the head of the agency determines that payment of actual expenses is more economical to the Government.

(d) When an employee transfers to a post of duty outside the continental United States, his expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of this title.

(e) When an employee transfers from one agency to another, the agency to which he transfers pays the expenses authorized by this section. However, under regulations prescribed by the President, in a transfer from one agency to another because of a reduction in force or transfer of function, expenses authorized by this section and sections 5726(b) and 5727 of this title (other than expenses authorized in connection with a transfer to a foreign country) and by section 5724a(a), (b) of this title may be paid in whole or in part by the agency from which the employee transfers or by the agency to which he transfers, as may be agreed on by the heads of the agencies concerned.

(f) Advance of funds may be made to an employee under the regulations of the President with the same safeguards required under section 5705 of this title.

(g) The allowances authorized by this section do not apply to an employee transferred under chapter 14 of title 22.

(h) When a transfer is made primarily for the convenience or benefit of an employee, including an employee in the Foreign Service of the United States, or at his request, his expenses of travel and transportation and the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking of household goods and personal effects may not be allowed or paid from Government funds.

(i) An agency may pay travel and transportation expenses (including storage of household goods and personal effects) and other relocation allowances under this section and sections 5724a and 5726(c) of this title when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the United States for the expenses and allowances is recoverable from the employees as a debt due the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 502, amended Pub. L. 90-83, § 1(36), Sept. 11, 1967, 81 Stat. 204; Pub. L. 90-623, § 1(14), Oct. 22, 1968, 82 Stat. 1313.)

#### **§ 5724a. Relocation expenses of employees transferred or re-employed**

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

(1) Expenses of per diem allowance instead of the subsistence expenses of the immediate family of the employee while en route

between his old and new official stations, not in excess of the maximum per diem rates prescribed by or under section 5702 of this title.

(2) Expenses of per diem allowance instead of subsistence of the employee and his spouse, not in excess of the maximum per diem rates prescribed by or under section 5702 of this title. Expenses of transportation to seek permanent residence quarters at a new official station when both the old and new stations are located within the continental United States. However, expenses under this paragraph may be allowed only for one round trip in connection with each change of station of the employee.

(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The period of residence in temporary quarters may be extended for an additional 30 days when the employee moves to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The regulations shall prescribe average daily rates for subsistence expenses per individual, not in excess of the maximum per diem rates prescribed by or under section 5702 of this title, for the location in which the temporary quarters are located. Reimbursement for subsistence expenses actually incurred may not exceed these daily rates for the first 10 days of the period, two-thirds of the rates for the second 10 days, and one-half of the rates for the balance of the period, including the additional 30 days.

(4) Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located, and reimbursement may not be made for losses on the sale of the residence. This paragraph applies regardless of whether title to the residence or the unexpired lease is in the name of the employee alone, in the joint names of the employee and a member of his immediate family, or in the name of a member of his immediate family alone.

(b) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, and notwithstanding other reimbursement authorized under this subchapter, an employee who is reimbursed under subsection (a) of this section or section 5724(a) of this title is entitled to—

(1) an amount not to exceed 2 weeks' basic pay, if he has an immediate family; or

(2) an amount not to exceed 1 week's basic pay, if he does not have an immediate family.

However, the amounts may not exceed amounts determined from the maximum rate for GS-13.

(c) Under such regulations as the President may prescribe, a former employee separated by reason of reduction in force or transfer of function who within 1 year after the separation is reemployed by a nontemporary appointment at a different geographical location from that where the separation occurred may be allowed and paid the expenses authorized by sections 5724, 5725, 5726(b), and 5727 of this title, and may receive the benefits authorized by subsections (a) and (b) of this section, in the same manner as though he had been transferred in the interest of the Government without a break in service to the location of reemployment from the location where separated. (Added Pub. L. 90-83, § 1(37) (A), Sept. 11, 1967, 81 Stat. 204.)

#### **§ 5725. Transportation expenses; employees assigned to danger areas**

(a) When an employee of the United States is on duty, or is transferred or assigned to duty, at a place designated by the head of the agency concerned as inside a zone—

- (1) from which his immediate family should be evacuated; or
- (2) to which they are not permitted to accompany him;

because of military or other reasons which create imminent danger to life or property, or adverse living conditions which seriously affect the health, safety, or accommodations of the immediate family, Government funds may be used to transport his immediate family and household goods and personal effects, under regulations prescribed by the head of the agency, to a location designated by the employee. When circumstances prevent the employee from designating a location, or it is administratively impracticable to determine his intent, the immediate family may designate the location. When the designated location is inside a zone to which movement of families is prohibited under this subsection, the employee or his immediate family may designate an alternate location.

(b) When the employee is assigned to a duty station from which his immediate family is not excluded by the restrictions in subsection (a) of this section, Government funds may be used to transport his immediate family and household goods and personal effects from the designated or alternate location to the duty station. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 503.)

#### **§ 5726. Storage expenses; household goods and personal effects**

(a) For the purpose of subsection (b) of this section, "household goods and personal effects" means such personal property of an employee and his dependents as the President may by regulation authorize to be transported or stored, including, in emergencies, motor vehicles authorized to be shipped at Government expense.

(b) Under such regulations as the President may prescribe, an employee, including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title, assigned to a permanent duty station outside the continental United States may be allowed storage expenses and related transportation and other expenses for his household goods and personal effects when—

(1) the duty station is one to which he cannot take or at which he is unable to use his household goods and personal effects; or

(2) the head of the agency concerned authorizes storage of the household goods and personal effects in the public interest or for reasons of economy.

The weight of the household goods and personal effects stored under this subsection, together with the weight of property transported under section 5724(a), may not exceed 11,000 pounds net weight, excluding a motor vehicle described by subsection (a) of this section.

(c) Under such regulations as the President may prescribe, when an employee, including a new appointee and a student trainee to the extent authorized by section 5723 of this title, is assigned to a permanent duty station at an isolated location in the continental United States to which he cannot take or at which he is unable to use his household goods and personal effects because of the absence of residence quarters at the location, nontemporary storage expenses or storage at Government expense in Government-owned facilities (including related transportation and other expenses), whichever is more economical, may be allowed the employee under regulations prescribed by the head of the agency concerned. The weight of property stored under this subsection, together with the weight of property transported under sections 5723(a) and 5724(a) of this title, may not exceed the total maximum weight the employee would be entitled to have moved. The period of nontemporary storage under this subsection may not exceed 3 years. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 554, amended Pub. L. 90-83, § 1(38), Sept. 11, 1967, 81 Stat. 205.)

### § 5727. Transportation of motor vehicles

(a) Except as specifically authorized by statute, an authorization in a statute or regulation to transport the effects of an employee or other individual at Government expense is not an authorization to transport an automobile.

(b) Under such regulations as the President may prescribe, the privately owned motor vehicle of an employee, including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title, may be transported at Government expense to, from, and between the continental United States and a post of duty outside the continental United States, or between posts of duty outside the continental United States when—

(1) the employee is assigned to the post of duty for other than temporary duty; and

(2) the head of the agency concerned determines that it is in the interest of the Government for the employee to have the use of a motor vehicle at the post of duty.

(c) An employee may transport only one motor vehicle under subsection (b) of this section during a 4-year period, except when the head of the agency concerned determines that replacement of the motor vehicle during the period is necessary for reasons beyond the control of the employee and is in the interest of the Government, and authorizes in advance the transportation under subsection (b) of this section of one additional privately owned motor vehicle as a replacement. When an employee has remained in continuous service outside the

United States during the 4-year period after the date of transportation under subsection (b) of this section of his motor vehicle, the head of the agency concerned may authorize transportation under subsection (b) of this section of a replacement for that motor vehicle.

(d) When the head of an agency authorizes transportation under subsection (b) of this section of a privately owned motor vehicle, the transportation may be by—

- (1) commercial means, if available at reasonable rates and under reasonable conditions; or
  - (2) Government means on a space-available basis.
- (e) (1) This section, except subsection (a), does not apply to—  
(A) the Foreign Service of the United States; or  
(B) the Central Intelligence Agency.  
(2) This section, except subsection (a), does not affect—  
(A) section 1138 of title 22; or  
(B) section 403e(4) of title 50.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 504.)

#### § 5728. Travel and transportation expenses; vacation leave

(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States under a new written agreement made before departing from the post of duty.

(b) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee of the United States appointed by the President, by and with the advice and consent of the Senate, for a term fixed by statute, and of transportation of his immediate family, but not household goods, from his post of duty outside the continental United States to the place of his actual residence at the time of appointment to the post of duty, after he has satisfactorily completed each 2 years of service outside the continental United States and is returning to his actual place of residence to take leave before serving at least 2 more years of duty outside the continental United States.

(c) This section does not apply to appropriations for the Foreign Service of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 505.)

#### § 5729. Transportation expenses; prior return of family

(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations, not more than once before the return to the United States or its territories or possessions of an employee whose post of duty is outside the continental United States, the expenses of transporting his immediate family and of shipping his household goods and personal effects from his post of duty to his actual place of residence when—

(1) he has acquired eligibility for that transportation; or  
(2) the public interest requires the return of the immediate family for compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health, death of a member of the immediate family, or obligation imposed by authority or circumstances over which the individual has no control.

(b) Under such regulations as the President may prescribe, an agency shall reimburse from its appropriations an employee whose post of duty is outside the continental United States for the proper transportation expenses of returning his immediate family and his household goods and personal effects to the United States or its territories or possessions, when—

(1) their return was made at the expense of the employee before his return and for other than reasons of public interest; and

(2) he acquires eligibility for those transportation expenses.

(c) This section does not apply to appropriations for the Foreign Service of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 505.)

### § 5730. Funds available

Funds available for travel expenses of an employee are available for expenses of transportation of his immediate family, and funds available for transportation of things are available for transportation of household goods and personal effects, as authorized by this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 506.)

### § 5731. Expenses limited to lowest first-class rate

(a) The allowance for actual expenses for transportation may not exceed the lowest first-class rate by the transportation facility used unless it is certified, in accordance with regulations prescribed by the President, that—

(1) lowest first-class accommodations are not available; or

(2) use of a compartment or other accommodation authorized or approved by the head of the agency concerned or his designee is required for security purposes.

(b) Instead of the maximum fixed by subsection (a) of this section, the allowance to an employee of the United States for actual expenses for transportation on an inter-island steamship in Hawaii may not exceed the rate for accommodations on the steamship that is equivalent as nearly as possible to the rate for the lowest first-class accommodations on trans-pacific steamships. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 506.)

### § 5732. General average contribution; payment or reimbursement

Under such regulations as the President may prescribe, appropriations chargeable for the transportation of baggage and household goods and personal effects of employees of the United States, volunteers as defined by section 8142(a) of this title, and members of the uniformed services are available for the payment or reimbursement of general average contributions required. Appropriations are not available for the payment or reimbursement of general average contributions—

(1) required in connection with and applicable to quantities of baggage and household goods and personal effects in excess of quantities authorized by statute or regulation to be transported;

(2) when the individual concerned is allowed under statute or regulation a commutation instead of actual transportation expenses; or

(3) when the individual concerned selected the means of shipment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 506.)

### **§ 5733. Expeditious travel**

The travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel. (Added Pub. L. 90-206, § 222(c)(1), Dec. 16, 1967, 81 Stat. 641.)

## SUBCHAPTER III—TRANSPORTATION OF REMAINS, DEPENDENTS, AND EFFECTS

### § 5741. General prohibition

Except as specifically authorized by statute, the head of an Executive department or military department may not authorize an expenditure in connection with the transportation of remains of a deceased employee. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 506.)

### § 5742. Transportation of remains, dependents, and effects; death occurring away from official station or abroad

- (a) For the purpose of this section, "agency" means—
  - (1) an Executive agency;
  - (2) a military department;
  - (3) an agency in the legislative branch; and
  - (4) an agency in the judicial branch.
- (b) When an employee dies, the head of the agency concerned, under regulations prescribed by the President and, except as otherwise provided by law, may pay from appropriations available for the activity in which the employee was engaged—
  - (1) the expense of preparing and transporting the remains to the home or official station of the employee, or such other place appropriate for interment as is determined by the head of the agency concerned, if death occurred while the employee was in a travel status away from his official station in the United States or while performing official duties outside the United States or in transit thereto or therefrom; and
  - (2) the expense of transporting his dependents, including expenses of packing, crating, draying, and transporting household effects and other personal property to his former home or such other place as is determined by the head of the agency concerned, if death occurred while the employee was performing official duties outside the United States or in transit thereto or therefrom.
- (c) When a dependent of an employee dies while residing with the employee performing official duties outside the continental United States or in Alaska or in transit thereto or therefrom, the head of the agency concerned may pay the necessary expenses of transporting the remains to the home of the dependent, or such other place appropriate for interment as is determined by the head of the agency concerned. If practicable, the agency concerned in respect of the deceased may furnish mortuary services and supplies on a reimbursable basis when—
  - (1) local commercial mortuary facilities and supplies are not available; or
  - (2) the cost of available mortuary facilities and supplies are prohibitive in the opinion of the head of the agency.

Reimbursement for the cost of mortuary services and supplies furnished under this subsection shall be collected and credited to current appropriations available for the payment of these costs.

(d) The benefits of this section may not be denied because the deceased was temporarily absent from duty when death occurred. (Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 507.)

**SUBCHAPTER IV—MISCELLANEOUS PROVISIONS****§ 5751. Travel expenses of witnesses**

(a) Under such regulations as the Attorney General may prescribe, an employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) summoned, or assigned by his agency, to testify or produce official records on behalf of the United States is entitled to travel expenses under subchapter I of this chapter. If the case involves the activity in connection with which he is employed, the travel expenses are paid from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official of the agency concerned. If the case does not involve its activity, the employing agency may advance or pay the travel expenses of the employee, and later obtain reimbursement from the agency properly chargeable with the travel expenses.

(b) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) summoned, or assigned by his agency, to testify in his official capacity or produce official records, on behalf of a party other than the United States, is entitled to travel expenses under subchapter I of this chapter, except to the extent that travel expenses are paid to the employee for his appearance by the court, authority, or party which caused him to be summoned. (Added Pub. L. 91-563, § 4(a), Dec. 1970, 84 Stat. 1477.)

**§ 5752. Travel expenses of Senior Executive Service candidates**

Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency. (Added, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173.)

## **CHAPTER 59—ALLOWANCES**

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**SEC.**

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## SUBCHAPTER I—UNIFORMS

### § 5901. Uniform allowances

(a) There is authorized to be appropriated annually to each agency of the Government of the United States, including a Government owned corporation, and of the government of the District of Columbia, on a showing of necessity or desirability, an amount not to exceed \$125 multiplied by the number of employees of the agency who are required by regulation or statute to wear a prescribed uniform in the performance of official duties and who are not being furnished with the uniform. The head of the agency concerned, out of funds made available by the appropriation, shall—

- (1) furnish to each of these employees a uniform at a cost not to exceed \$125 a year; or
- (2) pay to each of these employees an allowance for a uniform not to exceed \$125 a year.

The allowance may be paid only at the times and in the amounts authorized by the regulations prescribed under section 5903 of this title. When the agency pays direct to the uniform vendor, the head of the agency may deduct a service charge of not more than 4 percent.

(b) When the furnishing of a uniform or the payment of a uniform allowance is authorized under another statute or regulation existing on September 1, 1954, the head of the agency concerned may continue the furnishing of the uniform or the payment of the uniform allowance under that statute or regulation, but in that event a uniform may not be furnished or allowance paid under this section.

(c) An allowance paid under this section is not wages within the meaning of section 409 of title 42 or chapters 21 and 24 of title 26. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 508, amended Pub. L. 90-83, § 1(39), Sept. 11, 1967, 81 Stat. 206.)

### § 5902. Increase in maximum uniform allowance

Notwithstanding section 5901 of this title, each of the respective maximum uniform allowances in effect on April 1, 1966, for the respective categories of employees to whom uniform allowances are paid under section 5901 of this title are increased, subject to the maximum allowance authorized by section 5901 of this title, as follows:

- (1) If the maximum uniform allowance is \$100 or more, it is increased by 25 percent.
- (2) If the maximum uniform allowance is \$75 or more but less than \$100, it is increased by 30 percent.
- (3) If the maximum uniform allowance is \$50 or more but less than \$75, it is increased by 35 percent.
- (4) If the maximum uniform allowance is less than \$50, it is increased by 40 percent.

The maximum uniform allowances, as in effect on April 1, 1966, and as increased by this section, may not be reduced. (Added Pub. L. 90-83, § 1(40) (A), Sept. 11, 1967, 81 Stat. 206.)

**§ 5903. Regulations**

The Director of the Bureau of the Budget shall prescribe regulations necessary for the uniform administration of this subchapter. (Added Pub. L. 90-83, § 1(40) (A), Sept. 11, 1967, 81 Stat. 206.)

## SUBCHAPTER II—QUARTERS

### § 5911. Quarters and facilities; employees in the United States

(a) For the purpose of this section—

(1) “Government” means the Government of the United States;

(2) “agency” means an Executive agency, but does not include the Tennessee Valley Authority;

(3) “employee” means an employee of an agency;

(4) “United States” means the several States, the District of Columbia, and the territories and possessions of the United States including the Commonwealth of Puerto Rico;

(5) “quarters” means quarters owned or leased by the Government; and

(6) “facilities” means household furniture and equipment, garage space, utilities, subsistence, and laundry service.

(b) The head of an agency may provide, directly or by contract, an employee stationed in the United States with quarters and facilities, when conditions of employment or of availability of quarters warrant the action.

(c) Rental rates for quarters provided for an employee under subsection (b) of this section or occupied on a rental basis by an employee or member of a uniformed service under any other provision of statute, and charges for facilities made available in connection with the occupancy of the quarters, shall be based on the reasonable value of the quarters and facilities to the employee or member concerned, in the circumstances under which the quarters and facilities are provided, occupied, or made available. The amounts of the rates and charges shall be paid by, or deducted from the pay of, the employee or member of a uniformed service, or otherwise charged against him in accordance with law. The amounts of payroll deductions for the rates and charges shall remain in the applicable appropriation or fund. When payment of the rates and charges is made by other than payroll deductions, the amounts of payment shall be credited to the Government as provided by law.

(d) When, as an incidental service in support of a program of the Government, quarters and facilities are provided by appropriate authority of the Government to an individual other than an employee or member of a uniformed service, the rates and charges therefor shall be determined in accordance with this section. The amounts of payment of the rates and charges shall be credited to the Government as provided by law.

(e) The head of an agency may not require an employee or member of a uniformed service to occupy quarters on a rental basis, unless the agency head determine that necessary service cannot be rendered, or

that property of the Government cannot adequately be protected, otherwise.

(f) The President may prescribe regulations governing the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, necessary and appropriate to carry out this section. The head of each agency may prescribe regulations, not inconsistent with the regulations of the President, necessary and appropriate to carry out the functions of the agency head under this section.

(g) Subsection (c) of this section does not repeal or modify any provision of statute authorizing the provision of quarters or facilities, either without charge or at rates or charges specifically fixed by statute. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 508.)

#### **§ 5912. Quarters in Government owned or rented buildings; employees in foreign countries**

Under regulations prescribed by the head of the agency concerned and approved by the President, an employee who is a citizen of the United States permanently stationed in a foreign country may be furnished, without cost to him, living quarters, including heat, fuel, and light, in a Government owned or rented building. The rented quarters may be furnished only within the limits of appropriations made therefor. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 509.)

#### **§ 5913. Official residence expenses**

(a) For the purpose of this section, "agency" has the meaning given it by section 5721 of this title.

(b) Under such regulations as the President may prescribe, funds available to an agency for administrative expenses may be allotted to posts in foreign countries to defray the unusual expenses incident to the operation and maintenance of official residences suitable for—

(1) the chief representatives of the United States at the posts; and

(2) such other senior officials of the Government of the United States as the President may designate.

(Pub. L. 89-544, Sept. 6, 1966, 80 Stat. 510.)

## SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

### § 5921. Definitions

For the purpose of this subchapter—

- (1) “Government” means the Government of the United States;
- (2) “agency” means an Executive agency and the Library of Congress, but does not include a Government controlled corporation;
- (3) “employee” means an employee in or under an agency and more specifically defined by regulations prescribed by the President;
- (4) “United States”, when used in a geographical sense, means the several States and the District of Columbia;
- (5) “continental United States” means the several States and the District of Columbia, but does not include Alaska or Hawaii; and
- (6) “foreign area” means—
  - (A) the Trust Territory of the Pacific Islands; and
  - (B) any other area outside the United States, the Commonwealth of Puerto Rico, the Canal Zone, and territories and possessions of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 510.)

### § 5922. General provisions

(a) Notwithstanding section 5536 of this title and except as otherwise provided by this subchapter, the allowances and differentials authorized by this subchapter may be granted to an employee officially stationed in a foreign area—

- (1) who is a citizen of the United States; and
- (2) whose rate of basic pay is fixed by statute or, without taking into consideration the allowances and differentials provided by this subchapter, is fixed by administrative action pursuant to law or is fixed administratively in conformity with rates paid by the Government for work of a comparable level of difficulty and responsibility in the continental United States.

To the extent authorized by a provision of statute other than this subchapter, the allowances and differentials provided by this subchapter may be paid to an employee officially stationed in a foreign area who is not a citizen of the United States.

(b) Allowances granted under this subchapter may be paid in advance, or advance of funds may be made therefor, through the proper disbursing official in such sums as are considered advisable in consideration of the need and the period of time during which expenditures must be made in advance by the employee. An advance of funds

not subsequently covered by allowances accrued to the employee under this subchapter is recoverable by the Government by—

(1) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employees from the Government; and

(2) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned, under regulations of the President, may waive in whole or in part a right of recovery under this subsection, if it is shown that the recovery would be against equity and good conscience or against the public interest.

(c) The allowances and differentials authorized by this subchapter shall be paid under regulations prescribed by the President governing—

(1) payments of the allowances and differentials and the respective rates at which the payments are made;

(2) the foreign areas, the groups of positions, and the categories of employees to which the rates apply; and

(3) other related matters.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 510.)

#### § 5923. Quarters allowances

When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

(1) A temporary lodging allowance for the reasonable cost of temporary quarters incurred by the employee and his family—

(A) for a period not in excess of 3 months after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter; and

(B) for a period of not more than 1 month immediately before final departure from the post after the necessary evacuation of residence quarters.

(2) A living quarters allowance for rent, heat, light, fuel, gas, electricity, and water, without regard to section 529 of title 31.

(3) Under unusual circumstances, payment or reimbursement for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred in initial repairs, alterations, and improvements to the privately leased residence of an employee at a post of assignment in a foreign area, if—

(A) the expenses are administratively approved in advance; and

(B) the duration and terms of the lease justify payment of the expenses by the Government.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 511.)

#### § 5924. Cost-of-living allowances

The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

(1) A post allowance to offset the difference between the cost of living at the post of assignment of the employee in a foreign area and the cost of living in the District of Columbia.

(2) A transfer allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in—

(A) a foreign area; or

(B) the United States between assignments to posts in foreign areas.

(3) A separate maintenance allowance to assist an employee who is compelled, because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse or dependents, or both.

(4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents, as follows:

(A) An allowance not to exceed the cost of obtaining such kindergarten, elementary and secondary educational services as are ordinarily provided without charge by the public schools in the United States, plus, in those cases when adequate schools are not available at the post of the employee, board and room, and periodic transportation between that post and the nearest locality where adequate schools are available, without regard to section 529 of title 31. The amount of the allowance granted shall be determined on the basis of the educational facility used.

(B) The travel expenses of dependents of an employee to and from a school in the United States to obtain an American secondary or undergraduate college education, not to exceed one annual trip each way for each dependent of an employee of the Department of State or the United States Information Agency, or one trip each way for each dependent of any other employee for the purpose of obtaining each type of education. An allowance payment under subparagraph (A) of this paragraph (4) may not be made for a dependent during the 12 months following his arrival in the United States for secondary education under authority contained in this subparagraph (B). Notwithstanding section 5921(6) of this title, travel expenses, for the purpose of obtaining undergraduate college education, may be authorized under this subparagraph (B), under such regulations as the President may prescribe, for dependents of employees who are citizens of the United States stationed in the Canal Zone.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 511, amended Pub. L. 92-187, § 2, Dec. 15, 1971, 85 Stat. 644; Pub. L. 93-126, § 12, Oct. 18, 1973, 87 Stat. 454; Pub. L. 93-475, § 13, Oct. 26, 1974, 88 Stat. 1443.)

**§ 5925. Post differentials**

A post differential may be granted on the basis of conditions of environment which differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive. A post differential may be granted to an employee officially stationed in the United States who is on extended detail in a foreign area. A post differential may not exceed 25 percent of the rate of basic pay. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 512.)

**§ 5926. Compensatory time off at certain posts in foreign areas**

(a) Under regulations prescribed pursuant to this subchapter, and notwithstanding subchapter V of chapter 55 of this title or any other law, the head of an agency may, on request of an employee serving in a foreign area—

(1) at an isolated post performing functions required to be maintained on a substantially continuous basis, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work; or

(2) at a post in a locality that customarily observes irregular hours of work or where other special conditions are present, in order to cope with those special circumstances, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work for use during the pay period in which it is earned.

Credit for compensatory time off earned under paragraph (2) shall not form the basis for any additional compensation.

(b) Compensatory time earned under this section shall be for use only while the employee is assigned to the post where it is earned. Any such compensatory time not used at the time the employee is reassigned to another post shall be forfeited. (Pub. L. 95-426, Oct. 7, 1978, 92 Stat. 980.)

## SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

### § 5941. Allowances based on living costs and conditions of environment; employees stationed outside continental United States or in Alaska

(a) Appropriations or funds available to an Executive agency, except a Government controlled corporation, for pay of employees stationed outside the continental United States or in Alaska whose rates of basic pay are fixed by statute, are available for allowances to these employees. The allowance is based on—

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

(3) both of these factors.

The allowance may not exceed 25 percent of the rate of basic pay. Except as otherwise specifically authorized by statute, the allowance is paid only in accordance with regulations prescribed by the President establishing the rates and defining the area, groups of positions, and classes of employees to which each rate applies.

(b) An employee entitled to a cost-of-living allowance under section 5924 of this title may not be paid an allowance under subsection (a) of this section based on living costs substantially higher than in the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 512.)

### § 5942. Allowance based on duty at remote worksites

Notwithstanding section 5536 of this title, an employee of an Executive department or an independent establishment who is assigned to duty, except temporary duty, at a site so remote from the nearest established communities or suitable places of residence as to require an appreciable degree of expense, hardship, and inconvenience, beyond that normally encountered in metropolitan commuting, on the part of the employee in commuting to and from his residence and such worksite, is entitled, in addition to pay otherwise due him, to an allowance of not to exceed \$10 a day. The allowance shall be paid under regulations prescribed by the President establishing the rates at which the allowance will be paid and defining and designating those sites, areas, and groups of positions to which the rates apply. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 513, amended Pub. L. 90-83, § 1(41), Sept. 11, 1967, 81 Stat. 207; Pub. L. 91-656, § 6(a), Jan. 8, 1971, 84 Stat. 1953.)

### § 5943. Foreign currency appreciation allowances

(a) The President, under such regulations as he may prescribe and on recommendation of the Director of the Bureau of the Budget, may meet losses sustained by employees and members of the uniformed services while serving in a foreign country due to the appre-

ciation of foreign currency in its relation to the American dollar. Allowances and expenditures under this section are not subject to income taxes.

(b) Annual appropriations are authorized to carry out subsection (a) of this section and to cover any deficiency in the accounts of the Secretary of the Treasury, including interest, arising out of the arrangement approved by the President on July 27, 1933, for the conversion into foreign currency of checks and drafts of employees and members of the uniformed services for pay and expenses.

(c) Payment under subsection (a) of this section may not be made to an employee or member of a uniformed service for a period during which his check or draft was converted into foreign currency under the arrangement referred to by subsection (b) of this section.

(d) The Director of the Bureau of the Budget shall report annually to Congress all expenditures made under this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 513.)

#### **§ 5944. Illness and burial expenses; native employees in foreign countries**

(a) The head of an Executive department or military department which maintains a permanent staff of employees in foreign countries may pay the burial expenses and expenses in connection with the last illness and death of a native employee of his department in a country in which the Secretary of State determines it is customary for employers to pay these expenses. Payment of these expenses may not exceed \$100 in any one case.

(b) The head of an Executive department or military department which maintains a permanent staff of employees in foreign countries in which the custom referred to by subsection (a) of this section does not exist, on finding that the immediate family of the deceased is destitute, may pay such of the expenses referred to by subsection (a) of this section within the limitations in that subsection to the family, heirs at law, or persons responsible for the debts of the deceased, as the employee in charge of the office abroad in which the deceased was employed considers proper.

(c) Payments under this section are made from appropriations available to the department concerned for miscellaneous or contingent expenses. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 513.)

#### **§ 5945. Notary public commission expenses**

An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia who is required to serve as a notary public in connection with the performance of official business is entitled to an allowance, established by the agency concerned, not in excess of the expense required to obtain the commission. Funds available to an agency concerned for personal services or general administrative expenses are available to carry out this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 514.)

#### **§ 5946. Membership fees; expenses of attendance at meetings; limitations**

Except as authorized by a specific appropriation, by express terms

in a general appropriation, or by sections 4109 and 4110 of this title, appropriated funds may not be used for payment of—

(1) membership fees or dues of an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia in a society or association; or

(2) expenses of attendance of an individual at meetings or conventions of members of a society or association.

This section does not prevent the use of appropriations for the Department of Agriculture for expenses incident to the delivery of lectures, the giving of instructions, or the acquiring of information at meetings by its employees on subjects relating to the authorized work of the Department. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 514.)

**§ 5947. Quarters, subsistence, and allowances for employees of the Corps of Engineers, Department of the Army, engaged in floating plant operations**

(a) An employee of the Corps of Engineers, Department of the Army, engaged in floating plant operations may be furnished quarters or subsistence, or both, on vessels, without charge, when the furnishing of the quarters or subsistence, or both, is determined to be equitable to the employee concerned, and necessary in the public interest, in connection with such operations.

(b) Notwithstanding section 5536 of this title, an employee entitled to the benefits of subsection (a) of this section while on a vessel, may be paid, in place of these benefits, an allowance for quarters or subsistence, or both, when—

(1) adverse weather conditions or similar circumstances beyond the control of the employee or the Corps of Engineers prevent transportation of the employee from shore to vessel; or

(2) quarters or subsistence, or both, are not available on the vessel while it is undergoing repairs.

(c) The quarters or subsistence, or both, or allowance in place thereof, may be furnished or paid only under regulations prescribed by the Secretary of the Army. (Added Pub. L. 91-656, § 7(a), Jan. 8, 1971, 84 Stat. 1954.)

**§ 5948. Physicians comparability allowances**

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) \$7,000 per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) \$10,000 per annum if the Government physician has served as a Government physician for more than twenty-four months.

(b) An allowance may not be paid pursuant to this section to any physician who—

- (1) is employed on less than a half-time or intermittent basis,
- (2) occupies an internship or residency training position,
- (3) is a reemployed annuitant, or
- (4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than September 30, 1979, nor shall any agreement cover a period of service extending beyond September 30, 1981.

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) section 5361 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;

(C) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(D) title 4 of the Foreign Service Act of 1946 (22 U.S.C. 861-890), relating to the Foreign Service;

(E) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(F) section 121 of title 2 of the Canal Zone Code, relating to the Canal Zone Government and the Panama Canal Company; or

(G) section 2 of the Act of May 29, 1959 (Public Law 86-36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency; and

(2) "agency" means an Executive agency, as defined in section 105 of this title, and the District of Columbia government.

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 87 of this title, or other benefits related to basic pay.

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be applicable to the Tennessee Valley Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority. (Added, Pub. L. 95-603, Nov. 6, 1978, 92 Stat. 3018.)

## Subpart E—Attendance and Leave

### CHAPTER 61—HOURS OF WORK

SEC.

6101. Basic 40-hour workweek; work schedules; regulations.  
6102. [Repealed.]  
6103. Holidays.  
6104. Holidays; daily, hourly, and piece-work basis employees.  
6105. Closing of Executive departments.  
6106. Time clocks; restrictions.

#### § 6101. Basic 40-hour workweek; work schedules; regulations

(a) (1) For the purpose of this subsection, "employee" includes an employee of the government of the District of Columbia and an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title, except as specifically provided under this paragraph.

(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall—

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that—

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(C) the working hours in each day in the basic workweek are the same;

(D) the basic nonovertime workday may not exceed 8 hours;

(E) the occurrence of holidays may not affect the designation of the basic workweek; and

(F) breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(4) Notwithstanding paragraph (3) of this subsection, the head of an Executive agency, a military department, or of the government of the District of Columbia may establish special tours of duty, of not less than 40 hours, to enable employees to take courses in nearby col-

leges, universities, or other educational institutions that will equip them for more effective work in the agency. Premium pay may not be paid to an employee solely because his special tour of duty established under this paragraph results in his working on a day or at a time of day for which premium pay is otherwise authorized.

(5) The Architect of the Capitol may apply this subsection to employees under the Office of the Architect of the Capitol or the Botanic Garden. The Librarian of Congress may apply this subsection to employees under the Library of Congress.

(b) (1) For the purpose of this subsection, "agency" and "employee" have the meanings given them by section 5541 of this title.

(2) To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee.

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 514, amended Pub. L. 90-83, § 1(43), Sept. 11, 1967, 81 Stat. 207; Pub. L. 92-392, § 6, Aug. 19, 1972, 86 Stat. 573; Pub. L. 94-183, § 2(25), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 6102. Repealed. Pub. L. 92-392, § 7, Aug. 19, 1972, 86 Stat. 573**

**§ 6103. Holidays**

(a) The following are legal public holidays:

New Year's Day, January 1.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly nonworkday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of his subsection. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 515, amended Pub. L. 90-363, § 1(a), June 28, 1968, 82 Stat. 250; Pub. L. 94-97, Sept. 18, 1975, 89 Stat. 479.)

#### **§ 6104. Holidays; daily, hourly, and piece-work basis employees**

When a regular employee as defined by section 2105 of this title or an individual employed regularly by the government of the District of Columbia, whose pay is fixed at a daily or hourly rate, or on a piece-work basis, is relieved or prevented from working on a day—

(1) on which agencies are closed by Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Commissioner;

(2) by administrative order under regulations issued by the President, or, for individuals employed by the government of the District of Columbia, by the District of Columbia Council; or

(3) solely because of the occurrence of a legal public holiday under section 6103 of this title, or a day declared a holiday by Federal statute, Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Commissioner;

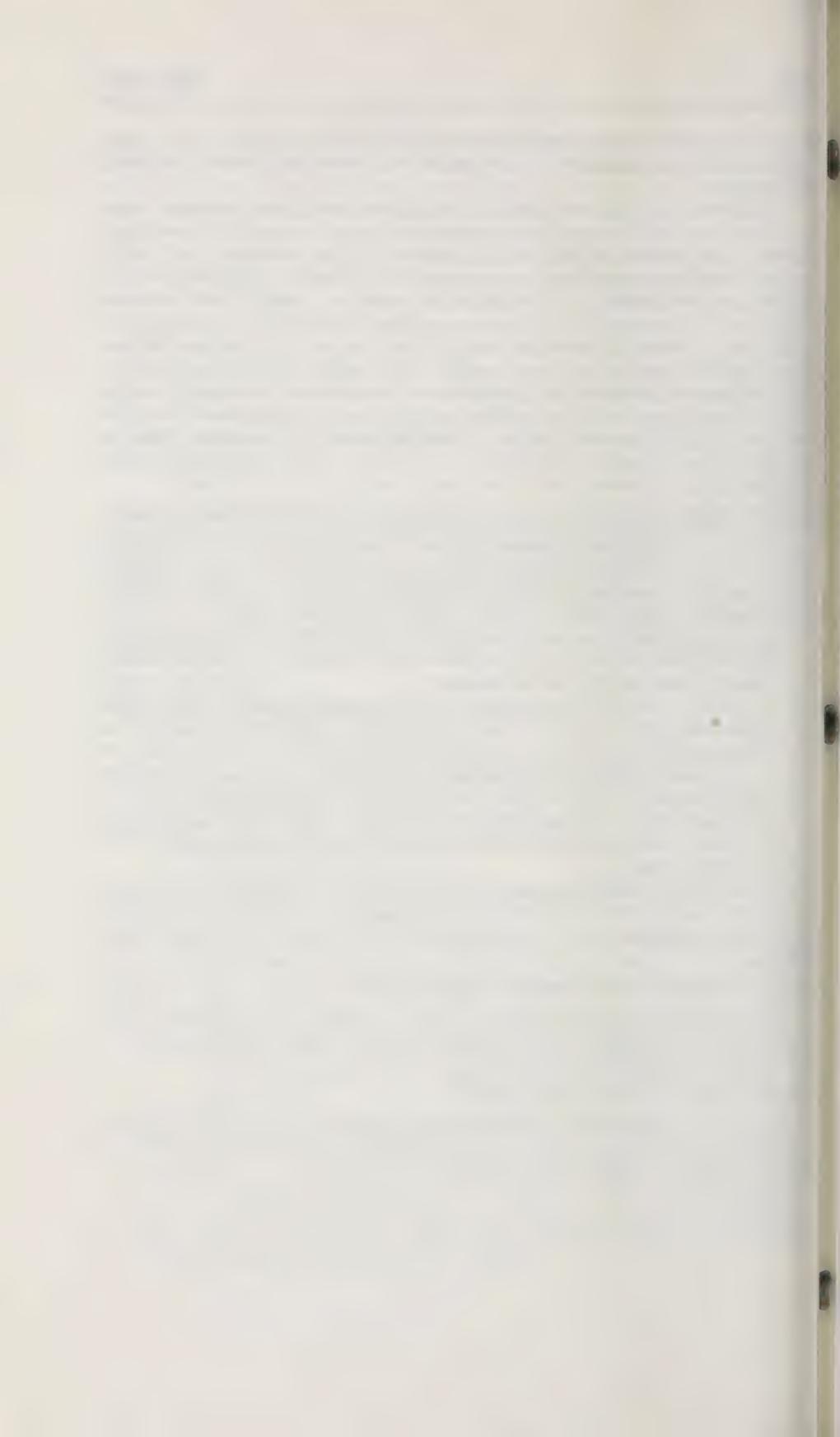
he is entitled to the same pay for that day as for a day on which an ordinary day's work is performed. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 516, amended Pub. L. 90-623, § 1(15), Oct. 22, 1968, 82 Stat. 1313.)

#### **§ 6105. Closing of Executive departments**

An Executive department may not be closed as a mark to the memory of a deceased former official of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 516.)

#### **§ 6106. Time clocks; restrictions**

A recording clock may not be used to record time of an employee of an Executive department in the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 516.)



## **CHAPTER 63—LEAVE**

### **SUBCHAPTER I—ANNUAL AND SICK LEAVE**

- SEC.
- 6301. Definitions.
  - 6302. General provisions.
  - 6303. Annual leave; accrual.
  - 6304. Annual leave; accumulation.
  - 6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels.
  - 6306. Annual leave; refund of lump-sum payment; recredit of annual leave.
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### **SUBCHAPTER II—OTHER PAID LEAVE**

- 6321. Absence of veterans to attend funeral services.
- 6322. Leave for jury or witness service; official duty status for certain witness service.
- 6323. Military leave; Reserves and National Guardsmen.
- 6324. Absence of certain police and firemen.
- 6325. Absence resulting from hostile action abroad.
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(329)

## SUBCHAPTER I—ANNUAL AND SICK LEAVE

### § 6301. Definitions

For the purpose of this subchapter—

(1) “United States”, when used in a geographical sense, means the several States and the District of Columbia; and

(2) “employee” means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual employed by the government of the District of Columbia;

but does not include—

(i) a teacher or librarian of the public schools of the District of Columbia;

(ii) a part-time employee who does not have an established regular tour of duty during the administrative workweek;

(iii) a temporary employee engaged in construction work at an hourly rate;

(iv) an employee of the Canal Zone Government or the Panama Canal Company when employed on the Isthmus of Panama;

(v) a physician, dentist, or nurse in the Department of Medicine and Surgery, Veterans’ Administration;

(vi) an employee of either House of Congress or of the two Houses;

(vii) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(viii) an alien employee who occupies a position outside the United States, except as provided by section 6310 of this title;

(ix) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(x) an officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title;

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;

(xii) an officer who receives pay under section 866 of title 22; or

(xiii) an officer in the legislative or judicial branch who is appointed by the President.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 517, amended Pub. L. 91-375, § 6(c)(17), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-519, Oct. 25, 1978, 92 Stat. 1819.)

**§ 6302. General provisions**

(a) The days of leave provided by this subchapter are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order.

(b) For the purpose of this subchapter an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek.

(c) A part-time employee, unless otherwise excepted, is entitled to the benefits provided by subsection (d) of this section and sections 6303, 6304 (a), (b), 6305(a), 6307, and 6310 of this title on a pro rata basis.

(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe.

(e) If an officer excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit.

(f) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 517, amended Pub. L. 93-181, § 4, Dec. 14, 1973; 87 Stat. 706; Pub. L. 95-519, Oct. 25, 1978, 92 Stat. 1819.)

**§ 6303. Annual leave; accrual**

(a) An employee is entitled to annual leave with pay which accrues as follows—

(1) one-half day for each full biweekly pay period for an employee with less than 3 years of service;

(2) three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and

(3) one day for each full biweekly pay period for an employee with 15 or more years of service.

In determining years of service, an employee is entitled to credit for all service creditable under section 8332 of this title for the purpose of an annuity under subchapter III of chapter 83 of this title. However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 301 of title 38;

(B) that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.

(b) Notwithstanding subsection (a) of this section, an employee whose current employment is limited to less than 90 days is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under successive appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection.

(c) A change in the rate of accrual of annual leave by an employee under this section takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(d) Leave granted under this subchapter is exclusive of time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transportation, in the case of an employee—

(1) to whom section 6304(b) of this title applies;

(2) whose post of duty is outside the United States; and

(3) who returns on leave to the United States, or to his place of residence, which is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico.

This subsection does not apply to more than one period of leave in a prescribed tour of duty at a post outside the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 518, amended Pub. L. 93-181, § 2, Dec. 14, 1973, 87 Stat. 705.)

#### **§ 6304. Annual leave; accumulation**

(a) Except as provided by subsections (b), (d), (e), and (f) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years, until it totals not more than 30 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

(b) Annual leave not used by an employee of the Government of the United States in one of the following classes of employees stationed outside the United States accumulates for use in succeeding years until it totals not more than 45 days at the beginning of the first full

biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year:

(1) Individuals directly recruited or transferred by the Government of the United States from the United States or its territories or possessions including the Commonwealth of Puerto Rico for employment outside the area of recruitment or from which transferred.

(2) Individuals employed locally but—

(A)(i) who were originally recruited from the United States or its territories or possessions including the Commonwealth of Puerto Rico but outside the area of employment;

(ii) who have been in substantially continuous employment by other agencies of the United States, United States firms, interests, or organizations, international organizations in which the United States participates or foreign governments; and

(iii) whose conditions of employment provide for their return transportation to the United States or its territories or possessions including the Commonwealth of Puerto Rico; or

(B)(i) who were at the time of employment temporarily absent, for the purpose of travel or formal study, from the United States, or from their respective places of residence in its territories or possessions including the Commonwealth of Puerto Rico; and

(ii) who, during the temporary absence, have maintained residence in the United States or its territories or possessions including the Commonwealth of Puerto Rico but outside the area of employment.

(3) Individuals who are not normally residents of the area concerned and who are discharged from service in the armed forces to accept employment with an agency of the Government of the United States.

(c) Annual leave in excess of the amount allowable—

(1) under subsection (a) or (b) of this section which was accumulated under earlier statute; or

(2) under subsection (a) of this section which was accumulated under subsection (b) of this section by an employee who becomes subject to subsection (a) of this section;

remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding year in excess of the amount which accrued during that year, until the employee's accumulated leaves does not exceed the amount allowed under subsection (a) or (b) of this section, as appropriate.

(d)(1) Annual leave which is lost by operation of this section because of—

(A) administrative error when the error causes a loss of annual leave otherwise accrueable after June 30, 1960;

(B) exigencies of the public business when the annual leave was scheduled in advance; or

(C) sickness of the employee when the annual leave was scheduled in advance; shall be restored to the employee.

(2) Annual leave restored under paragraph (1) of this subsection, or under clause (2) of section 5562(a) of this title, which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management. Leave credited under this paragraph but unused and still available to the employee under the regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(e) Annual leave otherwise accruable after June 30, 1960, which is lost by operation of this section because of administrative error and which is not credited under subsection (d)(2) of this section because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date of discovery of the error. Payment shall be made by the agency of employment when the lump-sum payment provisions of section 5551 of this title last became applicable to the employee at the salary rate in effect on the date of the lump-sum provisions became applicable.

(f) Annual leave accrued by an individual while serving in a position in the Senior Executive Service shall not be subject to the limitation on accumulation otherwise imposed by this section (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 519, amended Pub. L. 93-181, §3, Dec. 14, 1973, 87 Stat. 705; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1173 and 1224.)

#### **§ 6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels**

(a) After 24 months of continuous service outside the United States, an employee may be granted leave of absence, under regulations of the President, at a rate not to exceed 1 week for each 4 months of that service without regard to other leave provided by this subchapter. Leave so granted—

(1) is for use in the United States, or if the employee's place of residence is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico;

(2) accumulates for future use without regard to the limitation in section 6304(b) of this title; and

(3) may not be made the basis for terminal leave or for a lump-sum payment.

(b) The President may authorize leave of absence to an officer excepted from this subchapter by section 6301(2)(xii) of this title for use in the United States and its territories or possessions. Leave so authorized does not constitute a leave system and may not be made the basis for a lump-sum payment.

(c) An officer, crewmember, or other employee serving aboard an oceangoing vessel on an extended voyage may be granted leave of absence, under regulations of the Office of Personnel Management, at

a rate not to exceed 2 days for each 30 calendar days of that service without regard to other leave provided by this subchapter. Leave so granted—

- (1) accumulates for future use without regard to the limitation in section 6304(b) of this title;
- (2) may not be made the basis for a lump-sum payment; and
- (3) may not be made the basis for terminal leave except under such special or emergency circumstances as may be prescribed under the regulations of the Office.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 520, amended Pub. L. 89-747 § 1 (1), (2), Nov. 2, 1966, 80 Stat. 1179; Pub. L. 90-623, § 1(16), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 6306. Annual leave; refund of lump-sum payment; recredit of annual leave**

(a) When an individual who received a lump-sum payment for leave under section 5551 of this title is reemployed before the end of the period covered by the lump-sum payment in or under the Government of the United States or the government of the District of Columbia, except in a position excepted from this subchapter by section 6301(2) (ii), (iii), (vi), or (vii) of this title, he shall refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.

(b) An amount refunded under subsection (a) of this section shall be deposited in the Treasury of the United States to the credit of the employing agency. When an individual is reemployed under the same leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency. When an individual is reemployed under a different leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management. When an individual is reemployed in a position excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, an amount of leave equal to the leave represented by the refund is deemed, on separation from the service, death, or transfer to another position in the service, to have remained to his credit. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 520; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-519, Oct. 25, 1978, 92 Stat. 1819.)

#### **§ 6307. Sick leave; accrual and accumulation**

(a) An employee is entitled to sick leave with pay which accrues on the basis of one-half day for each full biweekly pay period, except that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department of the District of Columbia on the basis of two-fifths of a day for each full biweekly pay period.

(b) Sick leave provided by this section, which is not used by an employee, accumulates for use in succeeding years.

(c) When required by the exigencies of the situation, a maximum of 30 days sick leave with pay may be advanced for serious disability or ailment, except that a maximum of 24 days sick leave with pay may be advanced to a member of the Firefighting Division of the Fire Department of the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 520.)

**§ 6308. Transfers between positions under different leave systems**

The annual and sick leave to the credit of an employee who transfers between positions under different leave systems without a break in service shall be transferred to his credit in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management, unless the individual is excepted from this subchapter by section 6301(2) (ii), (iii), (vi), or (vii) of this title. However, when a former member receiving a retirement annuity under sections 521–535 of title 4, District of Columbia Code, is reemployed in a position to which this subchapter applies, his sick leave balance may not be recrated to his account on the later reemployment. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521; amended Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 6309. Repealed. Pub. L. 94–183, § 2(26), Dec. 31, 1975, 89 Stat. 1058****§ 6310. Leave of absence; aliens**

The head of the agency concerned may grant leave of absence with pay, not in excess of the amount of annual and sick leave allowable to citizen employees under this subchapter, to alien employees who occupy positions outside the United States. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521.)

**§ 6311. Regulations**

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter. (Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521; amended Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1224.)

**§ 6312. Accrual and accumulation for former ASCS county office employees**

Service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7, shall be included in determining years of service for the purpose of section 6303(a) of this title in the case of any officer or employee in or under the Department of Agriculture. The provisions of section 6308 of this title for transfer of annual and sick leave between leave systems shall apply to the leave system established for such employees. (Added Pub. L. 90–367, § 2(a), June 29, 1968, 82 Stat. 277, amended Pub. L. 90–623, § 1(25), Oct. 22, 1968, 82 Stat. 1314.)

## SUBCHAPTER II—OTHER PAID LEAVE

### § 6321. Absence of veterans to attend funeral services

An employee in or under an Executive agency who is a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused from duty without loss of pay or deduction from annual leave for the time necessary, not to exceed 4 hours in any one day, to enable him to participate as an active pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the armed forces whose remains are returned from abroad for final interment in the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 521.)

### § 6322. Leave for jury or witness service; official duty status for certain witness service

(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is entitled to leave, without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance of efficiency rating, during a period of absence with respect to which he is summoned, in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve—

(1) as a juror; or

(2) other than as provided in subsection (b) of this section, as a witness on behalf of any party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party;

in the District of Columbia, a State, territory, or possession of the United States including the Commonwealth of Puerto Rico, the Canal Zone, or the Trust Territory of the Pacific Islands. For the purpose of this subsection, "judicial proceeding" means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature, but does not include an administrative proceeding.

(b) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is performing official duty during the period with respect to which he is summoned, or assigned by his agency, to—

(1) testify or produce official records on behalf of the United States or the District of Columbia; or

(2) testify in his official capacity or produce official records on behalf of a party other than the United States or the District of Columbia.

(c) The Office of Personnel Management may prescribe regulations for the administration of this section (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 552, amended Pub. L. 91-563, § 1(a), Dec. 19, 1970, 84 Stat. 1476; Pub. L. 94-310, § 1, June 15, 1976, 90 Stat. 687; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 6323. Military leave; Reserves and National Guardsmen

(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for each day, not in excess of 15 days in a calendar year, in which he is on active duty or is engaged in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard.

(b) Repealed. Pub. L. 91-375, § 6(c)(18)(B), Aug. 12, 1970, 84 Stat. 776.

(c) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

(1) is a member of a Reserve component of the Armed Forces, as described in section 261 of title 10, or the National Guard, as described in section 101 of title 32; and

(2) performs, for the purpose of providing military aid to enforce the law—

(A) Federal service under section 331, 332, 333, 3500, or 8500 of title 10, or other provision of law, as applicable; or

(B) full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, or a territory of the United States;

is entitled, during and because of such service, to leave without loss of or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 workdays in a calendar year.

(c)<sup>1</sup> An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general.

(d) Repealed. Pub. L. 91-375, § 6(c)(18)(B), Aug. 12, 1970, 84 Stat. 776.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 522, amended Pub. L. 90-588, § 2(a), Oct. 17, 1968, 82 Stat. 1151; Pub. L. 90-623, § 1(17), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 91-375, § 6(c)(18), Aug. 12, 1970, 84 Stat. 776.)

### § 6324. Absence of certain police and firemen

(a) Sick leave may not be charged to the account of a member of the Metropolitan Police force or the Fire Department of the District of Columbia, the United States Park Police force, or the Executive Protection Service force for an absence due to injury or illness resulting from the performance of duty.

<sup>1</sup> Probably should be "(d)".

(b) The determination of whether an injury or illness resulted from the performance of duty shall be made under regulations prescribed by—

(1) the District of Columbia Council for members of the Metropolitan Police force and the Fire Department of the District of Columbia;

(2) the Secretary of the Interior for the United States Park Police force; and

(3) the Secretary of the Treasury for the Executive Protection Service force.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 552, amended Pub. L. 90-623, § 1(18), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 94-183, § 2(28) and (29), Dec. 31, 1975, 89 Stat. 1058.)

### **§ 6325. Absence resulting from hostile action abroad**

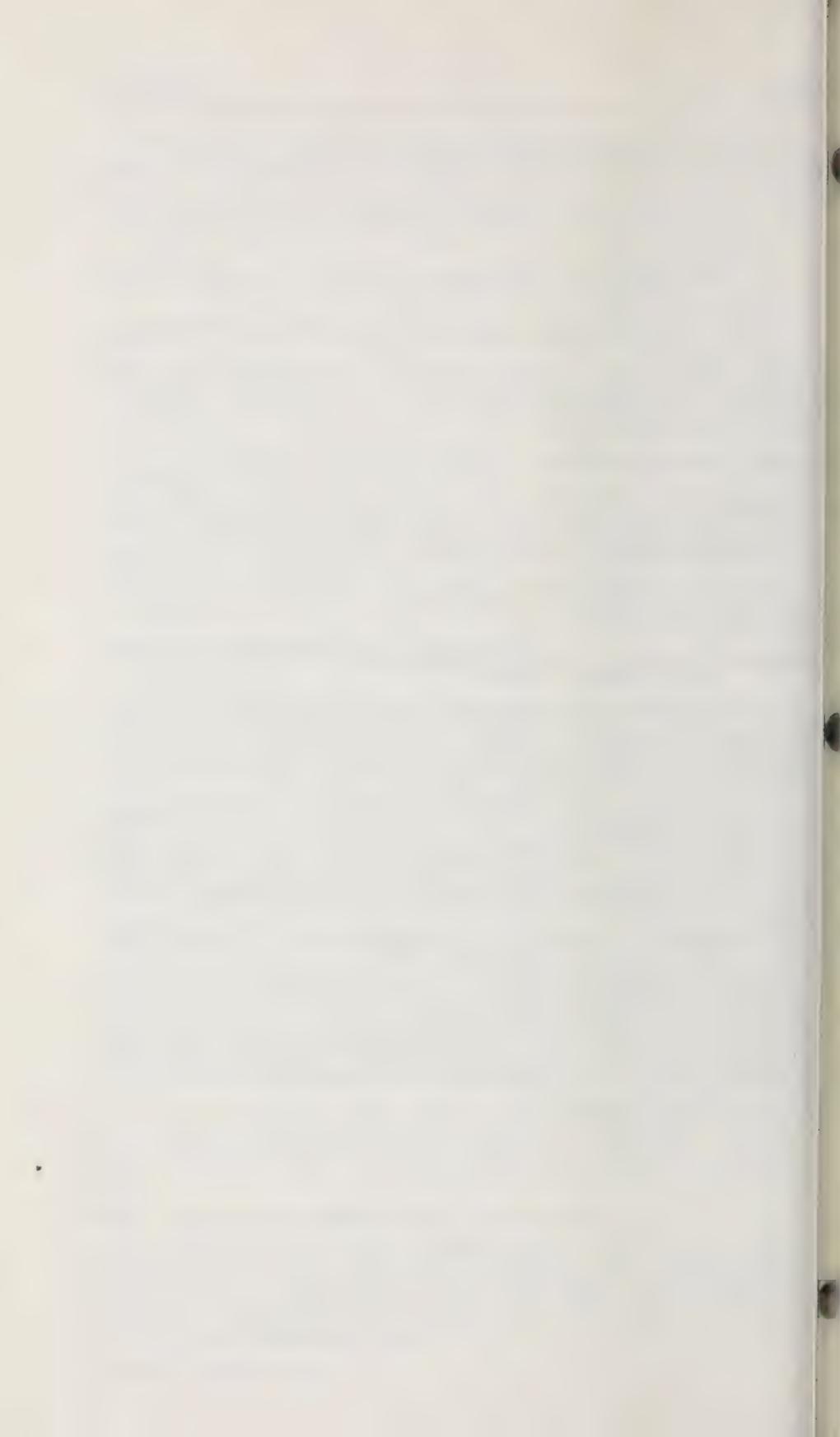
No leave shall be charged to the account of any officer or employee for absence, not to exceed one year, due to any injury incurred while serving abroad and resulting from war, insurgency, mob violence, or similar hostile action: *Provided*, That the injury shall not have been due to vicious habits, intemperance, or willful misconduct on the part of the officer or employee. (Added Pub. L. 90-221, § 3(a), Dec. 23, 1967, 81 Stat. 671.)

### **§ 6326. Absence in connection with funerals of immediate relatives in the Armed Forces**

(a) An employee of an executive agency or an individual employed by the government of the District of Columbia is entitled to not more than three days of leave without loss of, or reduction in, pay, leave to which he is otherwise entitled, credit for time or service, or performance or efficiency rating, to make arrangements for, or attend the funeral of, or memorial service for, an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone (as determined by the President in accordance with section 112 of the Internal Revenue Code).

(b) The Office of Personnel Management is authorized to issue regulations for the administration of this section.

(c) This section shall not be considered as affecting the authority of an Executive agency, except to the extent and under the conditions covered under this section, to grant administrative leave excusing an employee from work when it is in the public interest. (Added Pub. L. 90-588, § 1(a), Oct. 17, 1968, 82 Stat. 1151; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)



## **Subpart F—Labor-Management and Employee Relations**

### **CHAPTER 71—LABOR-MANAGEMENT RELATIONS**

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**SEC.**

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## SUBCHAPTER I—GENERAL PROVISIONS

### § 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

- (A) safeguards the public interest,
- (B) contributes to the effective conduct of public business, and
- (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1192.)

### § 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1192.)

**§ 7103. Definitions; application**

- (a) For the purpose of this chapter—
- (1) “person” means an individual, labor organization, or agency;
  - (2) “employee” means an individual—
    - (A) employed in an agency; or
    - (B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;
- but does not include—
- (i) an alien or noncitizen of the United States who occupies a position outside the United States;
  - (ii) a member of the uniformed services;
  - (iii) a supervisor or a management official;
  - (iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the Agency for International Development, or the International Communication Agency; or
  - (v) any person who participates in a strike in violation of section 7311 of this title;
- (3) “agency” means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans’ Canteen Service, Veterans’ Administration), the Library of Congress, and the Government Printing Office, but does not include—
- (A) the General Accounting Office;
  - (B) the Federal Bureau of Investigation;
  - (C) the General Intelligence Agency;
  - (D) the National Security Agency;
  - (E) the Tennessee Valley Authority;
  - (F) the Federal Labor Relations Authority; or
  - (G) the Federal Service Impasses Panel;
- (4) “labor organization” means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—
- (A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
  - (B) an organization which advocates the overthrow of the constitutional form of government of the United States;
  - (C) an organization sponsored by an agency; or
  - (D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

- (5) "dues" means dues, fees, and assessments;
- (6) "Authority" means the Federal Labor Relations Authority described in section 7104(a) of this title;
- (7) "Panel" means the Federal Service Impasses Panel described in section 7119(c) of this title;
- (8) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;
- (9) "grievance" means any complaint—
- (A) by any employee concerning any matter relating to the employment of the employee;
  - (B) by any labor organization concerning any matter relating to the employment of any employee; or
  - (C) by any employee, labor organization, or agency concerning—
    - (i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
    - (ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;
- (10) "supervisor" means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority;
- (11) "management official" means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;
- (12) "collective bargaining" means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;
- (13) "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;
- (14) "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation,

or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) "professional employee" means—

(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) "exclusive representative" means any labor organization which—

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

(i) on the basis of an election, or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) (1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1192.)

#### § 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority.

(c) (1) One of the original members of the Authority shall be appointed for a term of 1 year, one for a term of 3 years, and the Chairman for a term of 5 years. Thereafter, each member shall be appointed for a term of 5 years.

(2) Notwithstanding paragraph (1) of this subsection, the term of any member shall not expire before the earlier of—

(A) the date on which the member's successor takes office, or

(B) the last day of the Congress beginning after the date on which the member's term of office would (but for this subparagraph) expire.

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f) (1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position of the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and  
(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1196.)

#### § 7105. Powers and duties of the Authority

(a) (1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the accordng of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find neces-

sary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e) (1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may—

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Personnel Management in connection with any matter before the Authority. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1196.)

**§ 7106. Management rights**

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1198.)

## SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

### § 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority—

(1) by any person alleging—

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such

election, which shall include rules allowing employees eligible to vote the opportunity to choose—

- (1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or
- (2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

- (1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

- (2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

- (3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

- (A) the collective bargaining agreement has been in effect for more than 3 years, or

- (B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the of the collective bargaining agreement; or

- (4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1199.)

#### **§ 7112. Determination of appropriate units for labor organization representation**

(a) (1) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination

will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of, the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1200.)

### **§ 7113. National consultation rights**

(a) (1) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b) (1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1201.)

#### § 7114. Representation rights and duties

(a) (1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2) (B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the proceedings of the controlling agreement or, if none, under regulations prescribed by the agency. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1202.)

## § 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pur-

suant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

- (1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or
- (2) the employee is suspended or expelled from membership in the exclusive representative.

(c) (1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2) (A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit. (Pub. L. 95-454, Oct. 18, 1978, 92 Stat. 1203.)

### **§ 7116. Unfair labor practices**

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
- (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
- (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which does not interfere with any agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121 (e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be

raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1204.)

### **§ 7117. Duty to bargain in good faith; compelling need; duty to consult**

(a) (1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b) (1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c) (1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2) (B) of this subsection, the agency shall—

(A) file with the Authority a statement—

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3) (B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(d) (1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1205.)

### § 7118. Prevention of unfair labor practices

(a) (1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4) (A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

(i) any failure of the agency or labor organizations against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days after the date

on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1207.)

### **§ 7119. Negotiation impasses; Federal Service Impasses Panel**

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third party mediation, fail to resolve a negotiation impasse—

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c) (1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5) (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding

on such parties during the term of the agreement, unless the parties agree otherwise. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1208.)

### § 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanctions, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section

shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1210.)

### SUBCHAPTER III—GRIEVANCES<sup>1</sup>

#### § 7121. Grievance procedures

(a) (1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d) and (e) of this section, the procedures shall be the exclusive procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

- (1) be fair and simple,
- (2) provide for expeditious processing, and
- (3) include procedures that—

(A) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(B) assure such an employee the right to present a grievance in the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(C) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

- (1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);
- (2) retirement, life insurance, or health insurance;
- (3) a suspension or removal under section 7532 of this title;
- (4) any examination, certification, or appointment; or
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely

<sup>1</sup> Should be: "Subchapter III—Grievances, Appeals, and Review."

files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint, or a discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e) (1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c) (1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1211.)

## § 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date of such award, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title). (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1212.)

### § 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may

modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1213.)

## SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

### § 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

- (1) any employee representing an exclusive representative, or
- (2) in connection with any other matter covered by this chapter,

any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1214.)

### § 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpoena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1214.)

### **§ 7133. Compilation and publication of data**

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1215.)

### **§ 7134. Regulations**

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1215.)

### **§ 7135. Continuation of existing laws, recognitions, agreements, and procedures**

(a) Nothing contained in this chapter shall preclude—

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter. (Pub. L. 95-454, Oct. 3, 1978, 92 Stat. 1215.)

## CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

### SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

SEC.

- 7201. Antidiscrimination policy ; minority recruitment program.
- 7202. Marital status.
- 7203. Handicapping condition.
- 7204. Other prohibitions.

### SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

- 7211. Employees' right to petition Congress.

### SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

#### § 7201. Antidiscrimination policy ; minority recruitment program

(a) For the purpose of this section—

(1) “underrepresentation” means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

(2) “category of civil service employment” means—

(A) each grade of the General Schedule described in section 5104 of this title;

(B) each position subject to subchapter IV of chapter 53 of this title;

(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.

(b) It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy.

(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a

manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

(2) that the Office conduct a continuing program of—

(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523; amended, Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1152, 1216.)

## § 7202. Marital status

(a) The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of marital status in an Executive agency or in the competitive service.

(b) Regulations prescribed under any provision of this title, or under any other provision of law, granting benefits to employees, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children.

(c) Notwithstanding any other provision of law, any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, amended Pub. L. 92-187, § 3, Dec. 15, 1971, 85 Stat. 644; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1216.)

## § 7203. Handicapping condition

The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because



## **CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT**

### **SUBCHAPTER I—REGULATION OF CONDUCT**

**SEC.**

7301. Presidential regulations.

### **SUBCHAPTER II—EMPLOYMENT LIMITATIONS**

7311. Loyalty and striking.  
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### **SUBCHAPTER III—POLITICAL ACTIVITIES**

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7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.  
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7326. Nonpartisan political activity permitted.  
7327. Political activity permitted; employees residing in certain municipalities.

### **SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS**

7341. [Repealed.]  
7342. Receipt and disposition of foreign gifts and decorations.

### **SUBCHAPTER V—MISCONDUCT**

7351. Gifts to superiors.  
7352. Excessive and habitual use of intoxicants.



# **CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT**

## **SUBCHAPTER I—REGULATION OF CONDUCT**

SEC.

7301. Presidential regulations.

## **SUBCHAPTER II—EMPLOYMENT LIMITATIONS**

7311. Loyalty and striking.  
7312. Employment and clearance ; individuals removed for national security.  
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## **SUBCHAPTER III—POLITICAL ACTIVITIES**

7321. Political contributions and services.  
7322. Political use of authority or influence ; prohibition.  
7323. Political contributions ; prohibition.  
7324. Influencing elections ; taking part in political campaigns ; prohibitions ; exceptions.  
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## **SUBCHAPTER V—MISCONDUCT**

7351. Gifts to superiors.  
7352. Excessive and habitual use of intoxicants.

## SUBCHAPTER I—REGULATION OF CONDUCT

### **§ 7301. Presidential regulations**

The President may prescribe regulations for the conduct of employees in the executive branch. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524.)

## SUBCHAPTER II—EMPLOYMENT LIMITATIONS

### § 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

- (1) advocates the overthrow of our constitutional form of government;
- (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;
- (3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or
- (4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524.)

### § 7312. Employment and clearance; individuals removed for national security

Removal under section 7332 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States, other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

- (1) inciting a riot or civil disorder;
- (2) organizing, promoting, encouraging, or participating in a riot or civil disorder;
- (3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or
- (4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United States

or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, "felony" means any offense for which imprisonment is authorized for a term exceeding one year. (Added Pub. L. 90-351, § 1001(a), June 19, 1968, 82 Stat. 235.)

## SUBCHAPTER III—POLITICAL ACTIVITIES

### § 7321. Political contributions and services

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service is not obliged, by reason of that employment, to contribute to a political fund or to render political service, and that he may not be removed or otherwise prejudiced for refusal to do so. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525.)

### § 7322. Political use of authority or influence; prohibition

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that an employee in an Executive agency or in the competitive service may not use his official authority or influence to coerce the political action of a person or body. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525.)

### § 7323. Political contributions; prohibition

An employee in an Executive agency (except one appointed by the President, by and with the advice and consent of the Senate) may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a thing of value for political purposes. An employee who violates this section shall be removed from the service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525.)

### § 7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) An employee in an Executive agency or an individual employed by the government of the District of Columbia may not—

- (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election; or
- (2) take an active part in political management or in political campaigns.

For the purpose of this subsection, the phrase "an active part in political management or in political campaigns" means those acts of political management or political campaigning which were prohibited on the part of employees in the competitive service before July 19, 1940, by determinations of the Civil Service Commission<sup>1</sup> under the rules prescribed by the President.

(b) An employee or individual to whom subsection (a) of this section applies retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(c) Subsection (a) of this section does not apply to an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by the District of Columbia or by a recognized religious, philanthropic, or cultural organization.

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<sup>1</sup> Should be "Office of Personnel Management".

- (d) Subsection (a)(2) of this section does not apply to—  
(1) an employee paid from the appropriation for the office of the President;  
(2) the head or the assistant head of an Executive department or military department;  
(3) an employee appointed by the President, by and with the advice and consent of the Senate, who determines policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal laws;  
(4) the Mayor of the District of Columbia, the members of the Council of the District of Columbia, or the Chairman of the Council of the District of Columbia, as established by the District of Columbia Self-Government and Governmental Reorganization Act; or  
(5) the Recorder of Deeds of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 525, amended Pub. L. 93-268, § 4(a), Apr. 17, 1974, 88 Stat. 87.)

### § 7325. Penalties

An employee or individual who violates section 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Civil Service Commission<sup>1</sup> finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Commission.<sup>2</sup> (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526.)

### § 7326. Nonpartisan political activity permitted

Section 7324(a)(2) of this title does not prohibit political activity in connection with—

- (1) an election and the preceding campaign if none of the candidates is to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; or  
(2) a question which is not specifically identified with a National or State political party or political party of a territory or possession of the United States.

For the purpose of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, are deemed not specifically identified with a National or State political party or political party of a territory or possession of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526.)

### § 7327. Political activity permitted; employees residing in certain municipalities

(a) Section 7324(a)(2) of this title does not apply to an employee of The Alaska Railroad who resides in a municipality on the line of the railroad in respect to political activities involving that municipality.

(b) The Civil Service Commission<sup>1</sup> may prescribe regulations permitting employees and individuals to whom section 7324 of this title

<sup>1</sup> Should be "Office of Personnel Management".

<sup>2</sup> Should be "Office".

applies to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Commission<sup>2</sup> considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Commission<sup>2</sup> determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 526.)

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<sup>2</sup> Should be "Office".

**SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS**

**§ 7341. Repealed. Pub. L. 90-83, § 1(45) (B), Sept. 11, 1967, 81 Stat. 208.**

**§ 7342. Receipt and disposition of foreign gifts and decorations**

(a) For the purpose of this section—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1954) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) “foreign government” means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) “gift” means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(4) “decoration” means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) “minimal value” means a retail value in the United States at the time of acceptance of \$100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, "minimal value" shall be refined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define "minimal value" for its employees to be less than the value established under this paragraph; and

(6) "employing agency" means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1) and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c) (1) The Congress consents to—

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e) (1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfers, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to

an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f) (1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance; and

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(g) (1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies. (Pub. L. 95-105, Aug. 15, 1977, 91 Stat. 862; Pub. L. 95-426, Oct. 7, 1978, 92 Stat. 994.)

## SUBCHAPTER V—MISCONDUCT

### § 7351. Gifts to superiors

An employee may not—

- (1) solicit a contribution from another employee for a gift to an official superior;
- (2) make a donation as a gift to an official superior; or
- (3) accept a gift from an employee receiving less pay than himself.

An employee who violates this section shall be removed from the service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 527.)

### § 7352. Excessive and habitual use of intoxicants

An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 527.)

## **CHAPTER 75—ADVERSE ACTIONS**

### **SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS**

Sec.

- 7501. Definitions.
- 7502. Actions covered.
- 7503. Cause and procedure.
- 7504. Regulations.

### **SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS**

- 7511. Definitions ; application.
- 7512. Actions covered.
- 7513. Cause and procedure.
- 7514. Regulations.

### **SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES**

- 7521. Actions against administrative law judges.

### **SUBCHAPTER IV—NATIONAL SECURITY**

- 7531. Definitions.
- 7532. Suspension and removal.
- 7533. Effect on other statutes.

### **SUBCHAPTER V—SENIOR EXECUTIVE SERVICE**

- 7541. Definitions.
- 7542. Actions covered.
- 7543. Cause and procedure.

**SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS****§ 7501. Definitions**

For the purpose of this subchapter—

(1) “employee” means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) “suspension” means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1134.)

**§ 7502. Actions covered**

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1135.)

**§ 7503. Cause and procedure**

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1135.)

**§ 7504. Regulations**

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1135.)

**SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLough FOR 30 DAYS OR LESS****§ 7511. Definitions; application**

(a) For the purpose of this subchapter—

(1) “employee” means—

(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

(2) “suspension” has the meaning as set forth in section 7501(2) of this title;

(3) “grade” means a level of classification under a position classification system;

(4) “pay” means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) “furlough” means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1135.)

**§ 7512. Actions covered**

This subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and  
(5) a furlough of 30 days or less;  
but does not apply to—

- (A) a suspension or removal under section 7532 of this title,
- (B) a reduction-in-force action under section 3502 of this title,
- (C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321 (a) (2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,
- (D) a reduction in grade or removal under section 4303 of this title, or
- (E) an action initiated under section 1206 or 7521 of this title.

(Pub L. 95-454, Oct. 13, 1978, 92 Stat. 1136.)

### § 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b) (2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1136.)

### § 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1137.)

### SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

#### **§ 7521. Actions against administrative law judges**

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

- (1) a removal;
- (2) a suspension;
- (3) a reduction in grade;
- (4) a reduction in pay; and
- (5) a furlough of 30 days or less;

but do not include—

- (A) a suspension or removal under section 7532 of this title;
- (B) a reduction-in-force action under section 3052 of this title;

or

- (C) any action initiated under section 1206 of this title.

(Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1137.)

## SUBCHAPTER IV—NATIONAL SECURITY

### § 7531. Definitions

For the purpose of this subchapter, "agency" means—

- (1) the Department of State;
- (2) the Department of Commerce;
- (3) the Department of Justice;
- (4) the Department of Defense;
- (5) a military department;
- (6) the Coast Guard;
- (7) the Atomic Energy Commission;
- (8) the National Aeronautics and Space Administration; and
- (9) such other agency of the Government of the United States as the President designates in the best interests of national security.

The President shall report any designation to the Committees on the Armed Services of the Congress. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 528.)

### § 7532. Suspension and removal

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interest of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of any agency may remove an employee suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

- (1) has a permanent or indefinite appointment;
- (2) has completed his probationary or trial period; and
- (3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 529.)

### **§ 7533. Effect on other statutes**

This subchapter does not impair the powers vested in the Atomic Energy Commission by chapter 23 of title 42, or the requirement in section 2201(d) of title 42 that adequate provision be made for administrative review of a determination to dismiss an employee of the Atomic Energy Commission. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 529.)

## SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

### § 7541. Definitions

For the purpose of this subchapter—

(1) “employee” means a career appointee in the Senior Executive Service who—

(A) has completed the probationary period prescribed under section 3393(d) of this title; or

(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

(2) “suspension” has the meaning set forth in section 7501(2) of this title.

(Pub L. 95-454, Oct. 13, 1978, 92 Stat. 1174.)

### § 7542. Actions covered

This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1206 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 of this title. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1174.)

### § 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

(1) at least 30 days’ advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

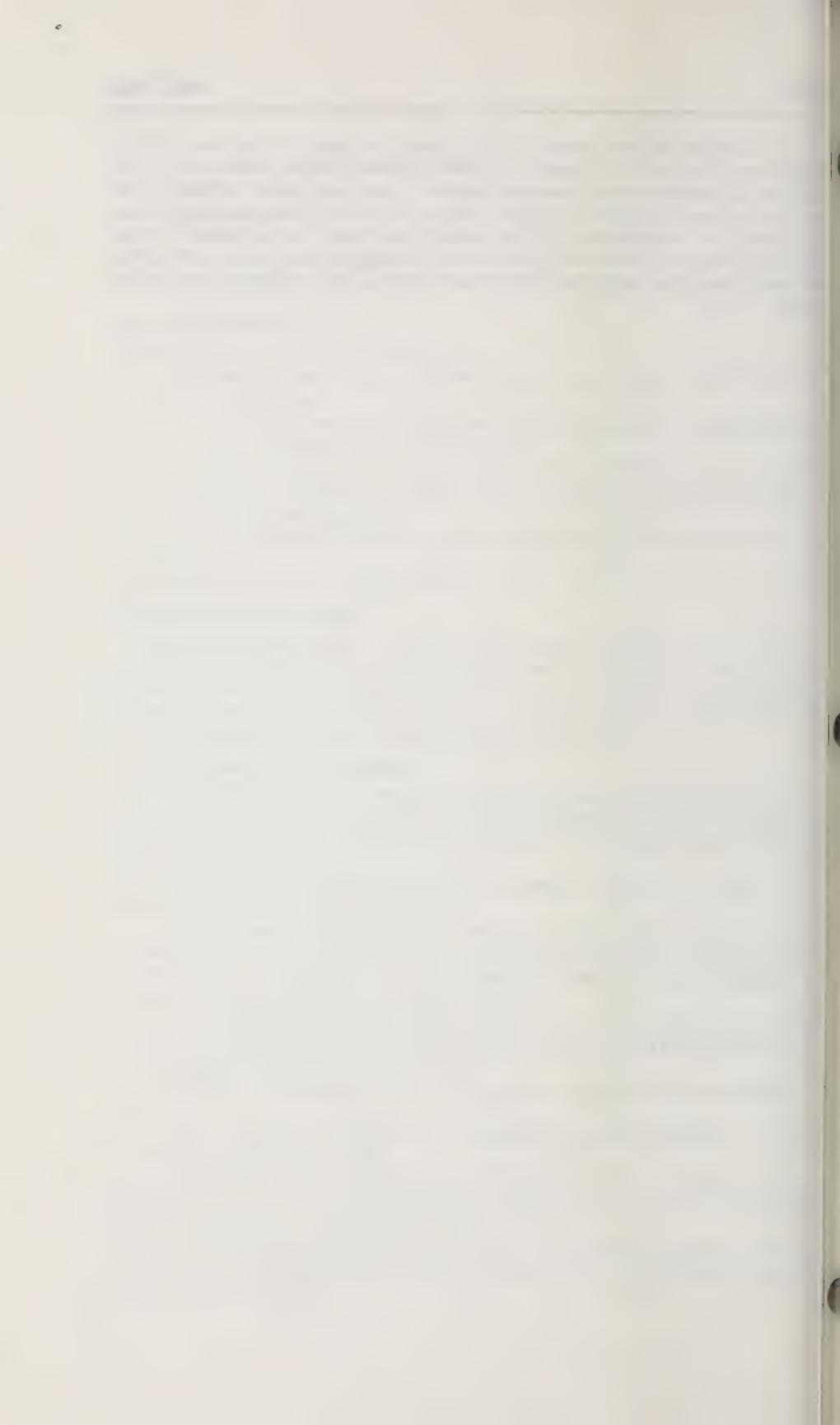
(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b) (2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1174.)



## CHAPTER 77—APPEALS

SEC.

7701. Appellate procedures.

7702. Actions involving discrimination.

7703. Judicial review of decisions of the Merit Systems Protection Board.

### § 7701. Appellate procedures

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

- (1) to a hearing for which a transcript will be kept; and
- (2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a) (1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(c) (1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision—

(A) in the case of an action based on unacceptable performance described in section 4303 of this title, is supported by substantial evidence, or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

(C) shows that the decision was not in accordance with law.

(d) (1) In any case in which—

(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decisionmaking of the Merit Systems Protection Board.

(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation under the jurisdiction of the Office is at issue in any proceeding under this section.

(e) (1) Except as provided in section 7702 of this title, any decision under subsection (b) of this section shall be final unless—

(A) a party to the appeal or the Director petitions the Board for review within 30 days after the receipt of the decision; or

(B) the Board reopens and reconsider a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administration law judge is required to be acted upon by the Board.

(2) The Director may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

(1) consolidate appeals filed by two or more appellants, or

(2) join two or more appeals filed by the same appellants and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

(g) (1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee, as the case may be, determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney

fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (d) of this section.

(i) (1) Upon the submission of any appeal to the Board under this section, the Board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding calendar year, the number of appeals on which it completed action during that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

(j) The Board may prescribe regulations to carry out the purpose of this section. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1138.)

## § 7702. Actions involving discrimination

(a) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who—

(A) has been effected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

(B) alleges that a basis for the action was discrimination prohibited by—

(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16c),

(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791),

(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or

(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

(2) In any matter before an agency which involves—

(A) any action described in paragraph (1)(A) of this subsection; and

(B) any issue of discrimination prohibited under any provision of law described in paragraph (1)(B) of this subsection; the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

(3) Any decision of the Board under paragraph (1) of this subsection shall be a judicially reviewable action as of—

(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either—

(A) concur in the decision of the Board; or

(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within the 60-day period prescribed under this subsection)

of additional evidence to the extent it considers necessary to supplement the record.

(5) (A) If the Commission concurs pursuant to paragraph (3) (A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

(B) If the Commission issues any decision under paragraph (3) (B) of this subsection, the Commission shall immediately refer the matter to the Board.

(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b) (5) (B) of this section, the Board shall consider the decision and—

(1) concur and adopt in whole the decision of the Commission; or

(2) to the extent that the Board finds that, as a matter of law, (A) the Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving such provision is not supported by the evidence in the record as a whole—

(i) reaffirm the initial decision of the Board; or

(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

(d) (1) If the Board takes any action under subsection (c) (2) of this section, the matter shall be immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including—

(A) the factual record compiled under this section,

(B) the decisions issued by the Board and the Commission under this section, and

(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

(2) (A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this

subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a) (1) of this section.

(6) (A) Each time the Board takes any action under subsection (c) (2) of this section, a special panel shall be convened which shall consist of—

(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

(e) (1) Notwithstanding any other provision of law, if at any time after—

(A) the 120th day following the filing of any matter described in subsection (a) (2) of this section with an agency, there is no judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

(B) the 120th day following the filing of an appeal with the Board under subsection (a) (1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b) (1) of this section); or

(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b) (1) of this title, there is no final agency action under subsection (b), (c), or (d) of this section;

an employe shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(d)).

(2) If, at any time after the 120th day following the filing of any matter described in subsection (a) (2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a) (1) of this section.

(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a) (1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a) (2) of this section.

(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1140.)

### § 7703. Judicial review of decisions of the Merit Systems Protection Board

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(2) The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.

(b)(1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the Court of Claims or a United States court of appeals as provided in chapters 91 and 158, respectively, of title 28. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

(c) In any case filed in the United States Court of Claims or a United States court of appeals, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulation having been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the District of Columbia if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or

regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals. (Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1143.)

## CHAPTER 79—SERVICES TO EMPLOYEES

### SEC.

7901. Health service programs.

7902. Safety programs.

7903. Protective clothing and equipment.

### § 7901. Health service programs

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

(b) A health service program may be established by contract or otherwise, but only—

(1) after consultation with the Secretary of Health, Education, and Welfare and consideration of its recommendations; and

(2) in localities where there are a sufficient number of employees to warrant providing the service.

(c) A health service program is limited to—

(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

(2) preemployment and other examinations;

(3) referral of employees to private physicians and dentists; and

(4) preventive programs relating to health.

(d) The Secretary of Health, Education, and Welfare, on request, shall review a health service program conducted under this section and shall submit comment and recommendations to the head of the agency concerned.

(e) When this section authorizes the use of the professional services of physicians, that authorization includes the use of the professional services of surgeons and osteopathic practitioners within the scope of their practice as defined by State law.

(f) The health programs conducted by the following agencies are not affected by this section—

(1) the Tennessee Valley Authority;

(2) the Canal Zone Government; and

(3) the Panama Canal Company.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 530, amended Pub. L. 90-83, § 1(47), Sept. 11, 1967, 81 Stat. 209.)

### § 7902. Safety programs

(a) For the purpose of this section—

(1) "employee" means an employee as defined by section 8101 of this title; and

(2) "agency" means an agency in any branch of the Government of the United States, including an instrumentality wholly

owned by the United States, and the government of the District of Columbia.

(b) The Secretary of Labor shall carry out a safety program under section 941(b)(1) of title 33 covering the employment of each employee of an agency.

(c) The President may—

(1) establish by Executive order a safety council composed of representatives of the agencies and of labor organizations representing employees to serve as an advisory body to the Secretary in furtherance of the safety program carried out by the Secretary under subsection (b) of this section; and

(2) undertake such other measures as he considers proper to prevent injuries and accidents to employees of the agencies.

(d) The head of each agency shall develop and support organized safety promotion to reduce accidents and injuries among employees of his agency, encourage safe practices, and eliminate work hazards and health risks.

(e) Each agency shall—

(1) keep a record of injuries and accidents to its employees whether or not they result in loss of time or in the payment or furnishing of benefits; and

(2) make such statistical or other reports on such forms as the Secretary may prescribe by regulation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 530, amended Pub. L. 91-596, § 19(c), Dec. 29, 1970, 84 Stat. 1610.)

### § 7903. Protective clothing and equipment

Appropriations available for the procurement of supplies and material or equipment are available for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. For the purpose of this section, "appropriations" includes funds made available by statute under section 849 of title 31. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 531.)

## **Subpart G—Insurance and Annuities**

### **CHAPTER 81—COMPENSATION FOR WORK INJURIES**

#### **SUBCHAPTER I—GENERALLY**

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## SUBCHAPTER I—GENERALLY

### § 8101. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(C) an individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(D) an individual employed by the government of the District of Columbia;

(E) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(F) an individual selected pursuant to chapter 121 of title 28, United States Code, and serving as a petit or grand juror and who is otherwise an employee for the purposes of this subchapter as defined by paragraphs (A), (B), (C), (D), and (E) of this subsection;

but does not include—

(i) a commissioned officer of the Regular Corps of the Public Health Service;

(ii) a commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(iii) a commissioned officer of the Environmental Science Services Administration; or

(iv) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521–535 of title 4, District of Columbia Code.

(2) “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treat-

ment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(3) "medical, surgical, and hospital services and supplies" includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners and hospitals within the scope of their practice as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(4) "monthly pay" means the monthly pay at the time of injury, or the monthly pay at the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of this title with respect to any period;

(5) "injury" includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services;

(6) "widow" means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion;

(7) "parent" includes stepparents and parents by adoption;

(8) "brother" and "sister" mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters;

(9) "child" means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children;

(10) "grandchild" means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support;

(11) "widower" means the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause or because of her desertion;

(12) "compensation" includes the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death;

(13) "war-risk hazard" means a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring in the country in which an individual to whom this subchapter applies is serving; from—

(A) the discharge of a missile, including liquids and gas, or the use of a weapon, explosive or other noxious thing by a hostile force or individual or in combating an attack or an imagined attack by a hostile force or individual;

(B) action of a hostile force or individual, including rebellion or insurrection against the United States or any of its allies;

(C) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or individual;

(D) the collision of vessels on convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(E) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities;

(14) "hostile force or individual" means a nation, a subject of a foreign nation, or an individual serving a foreign nation—

(A) engaged in a war against the United States or any of its allies;

(B) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(C) engaged in a war or armed conflict between military forces of any origin in a country in which an individual to whom this subchapter applies is serving;

(15) "allies" means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(16) "war activities" include activities directly relating to military operations;

(17) "student" means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

(18) "price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(19) "base month" means the month of July 1966 and each later month which is used as a basis for calculating an increase under section 8146a of this title.

(20) "organ" means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; and

(21) "United States medical officers and hospitals" includes medical officers and hospitals of the Army, Navy, Air Force, Veterans' Administration, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 532, amended, Pub. L. 90-83, § 1 (4), (48), Sept. 11, 1967, 81 Stat. 196, 209; Pub. L. 93-416, § 1, Sept. 7, 1974, 88 Stat. 1143-44.)

## § 8102. Compensation for disability or death of employee

(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is—

- (1) caused by willful misconduct of the employee;
- (2) caused by the employee's intention to bring about the injury or death of himself or of another; or
- (3) proximately caused by the intoxication of the injured employee.

(b) Disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual suffered by an employee who is employed outside the continental United States or in Alaska or in the Canal Zone, is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual. This subsection does not apply to an individual—

- (1) whose residence is at or in the vicinity of the place of his employment and who was not living there solely because of the exigencies of his employment, unless he was injured or taken while engaged in the course of his employment; or

(2) who is a prisoner of war or a protected individual under the Geneva Conventions of 1949 and is detained or utilized by the United States.

This subsection does not affect the payment of compensation under this subchapter derived otherwise than under this subsection, but compensation for disability or death does not accrue for a period for which pay, other benefit, or gratuity from the United States accrues to the disabled individual or his dependents on account of detention by the enemy or because of the same disability or death, unless that pay, benefit or gratuity is refunded or renounced. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 534.)

### § 8103. Medical services and initial medical and other benefits

(a) The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished—

(1) whether or disability has arisen;

(2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the Government; and

(3) by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on order of physicians and hospitals designated or approved by the Secretary.

The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

(b) The Secretary, under such limitations or conditions as he considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Secretary may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury which was accepted by the employing agency as probably compensable under this subchapter. The Secretary shall prescribe the form and content of the certificate. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 535, amended Pub. L. 90-83, § 1(49), Sept. 11, 1967, 81 Stat. 209; Pub. L. 93-416, § 2, Sept. 7, 1974, 88 Stat. 1143.)

### § 8104. Vocational rehabilitation

(a) The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Secretary, insofar as practicable, shall use the serv-

ices or facilities of State agencies and corresponding agencies which cooperate with the Secretary of Health, Education, and Welfare in carrying out the purposes of chapter 4 of title 29, except to the extent that the Secretary of Labor provides for furnishing these services under section 8103 of this title. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund. However, in reimbursing a State or corresponding agency under an arrangement pursuant to this section the cost of the agency reimbursable in full under section 32(b) (1) of title 29 is excluded.

(b) Notwithstanding section 8106, individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation at the rate provided in sections 8105 and 8110 of this title, less the amount of any earnings received from remunerative employment, other than employment undertaken pursuant to such rehabilitation (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 535, amended Pub. L. 93-416, § 3, Sept. 7, 1974, 88 Stat. 1144.)

### § 8105. Total disability

(a) If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 $\frac{2}{3}$  percent of his monthly pay, which is known as his basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes, is *prima facie* permanent total disability. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 535.)

### § 8106. Partial disability

(a) If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66 $\frac{2}{3}$  percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability.

(b) The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who—

(1) fails to make an affidavit or report when required; or

(2) knowingly omits or understates any part of his earnings; forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section.

(c) A partially disabled employee who—

(1) refuses to seek suitable work; or

(2) refuses or neglects to work after suitable work is offered

to, procured by, or secured for him;

is not entitled to compensation. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 536.)

## § 8107. Compensation schedule

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of  $66\frac{2}{3}$  percent of his monthly pay. The basic compensation is—

- (1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;
- (2) payable regardless of whether the disability also involves another impairment of the body; and
- (3) in addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by—

- (1) section 8105 of this title if the disability is total; or
- (2) section 8106 of this title if the disability is partial

(c) The compensation schedule is as follows:

- (1) Arm lost, 312 weeks' compensation.
- (2) Leg lost, 288 weeks' compensation.
- (3) Hand lost, 244 weeks' compensation.
- (4) Foot lost, 205 weeks' compensation.
- (5) Eye lost, 160 weeks' compensation.
- (6) Thumb lost, 75 weeks' compensation.
- (7) First finger lost, 46 weeks' compensation.
- (8) Great toe lost, 38 weeks' compensation.
- (9) Second finger lost, 30 weeks' compensation.
- (10) Third finger lost, 25 weeks' compensation.
- (11) Toe other than great toe lost, 16 weeks' compensation.
- (12) Fourth finger lost, 15 weeks' compensation.
- (13) Loss of hearing—

(A) complete loss of hearing of one ear, 52 weeks' compensation; or

(B) complete loss of hearing of both ears, 200 weeks' compensation.

(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.

(15) Compensation for loss of more than one phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half of the compensation for the loss of the entire digit.

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively.

(17) Compensation for loss of use of two or more digits, or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby.

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member.

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.

(20) In case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively. However, when the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears.

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500 shall be awarded in addition to any other compensation payable under this schedule.

(22) For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks' compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 536, amended, Pub. L. 90-83, § 1(50), Sept. 11, 1971, 81 Stat. 210; Pub. L. 93-416, §§ 4, 5, Sept. 7, 1974, 88 Stat. 1144-45.)

### **§ 8108. Reduction of compensation for subsequent injury to same member**

The period of compensation payable under the schedule in section 8107(e) of this title is reduced by the period of compensation paid or payable under the schedule for an earlier injury if—

(1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and

(2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.

In such a case, compensation for disability continuing after the scheduled period starts on expiration of that period as reduced under this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 538, amended Pub. L. 90-83, § (51), Sept. 11, 1967, 81 Stat. 210.)

### **§ 8109. Beneficiaries of awards unpaid at death; order of precedence**

(a) If an individual—

(1) has sustained disability compensable under section 8107(a) of this title;

(2) has filed a valid claim in his lifetime; and

(3) dies from a cause other than the injury before the end of the period specified by the schedule;

the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid—

(A) under an award made before or after the death;

(B) for the period specified by the schedule;  
(C) to and for the benefit of the persons then in being within the classes and proportions and on the conditions specified by this section; and

(D) in the following order of precedence:

(i) If there is no child, to the widow or widower.

(ii) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children.

(iii) If there is no widow or widower, to the child or children.

(iv) If there is no survivor in the above classes, to the parent or parents wholly or partly dependent for support on the decedent, or to other wholly dependent relatives listed by section 8133(a)(5) of this title, or to both in proportions provided by regulation.

(v) If there is no survivor in the above classes and no burial allowance is payable under section 8134 of this title, an amount not exceeding that which would be expendable under section 8134 of this title if applicable shall be paid to reimburse a person equitably entitled thereto to the extent and in the proportion that he has paid the burial expenses, but a compensated insurer or other person obligated by law or contract to pay the burial expenses or a State or political subdivision or entity is deemed not equitably entitled.

(b) Payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the individual, are at the basic rate of compensation for permanent disability specified by section 8107(a) of this title even if at the time of death the individual was entitled to the augmented rate specified by section 8110 of this title.

(c) A surviving beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), ceases to be entitled to payment on the happening of an event which would terminate his right to compensation for death under section 8133 of this title. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 538, amended Pub. L. 90-83, § 1(52), Sept. 11, 1967, 81 Stat. 210.)

## § 8110. Augmented compensation for dependents

(a) For the purpose of this section, "dependent" means—

(1) a wife, if—

(A) she is a member of the same household as the employee;

(B) she is receiving regular contributions from the employee for her support; or

(C) the employee has been ordered by a court to contribute to her support;

(2) a husband, if—

(A) he is a member of the same household as the employee;

or

(B) he is receiving regular contributions from the employee for his support; or

(C) the employee has been ordered by a court to contribute to his support;

(3) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is—

(A) under 18 years of age; or

(B) over 18 years of age and incapable of self-support because of physical or mental disability; and

(4) a parent, while wholly dependent on and supported by the employee.

Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries.

(b) A disabled employee with one or more dependents is entitled to have his basic compensation for disability augmented—

(1) at the rate of  $8\frac{1}{3}$  percent of his monthly pay if that compensation is payable under section 8105 or 8107(a) of this title; and

(2) at the rate of  $8\frac{1}{3}$  percent of the difference between his monthly pay and his monthly wage-earning capacity if that compensation is payable under section 8106(a) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 539, amended Pub. L. 90-83, § 1(53), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, § 6, Sept. 7, 1974, 88 Stat. 1145.)

### **§ 8111. Additional compensation for services of attendants or vocational rehabilitation**

(a) The Secretary of Labor may pay an employee who has been awarded compensation an additional sum of not more than \$500 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance.

(b) The Secretary may pay an individual undergoing vocational rehabilitation under section 8104 of this title additional compensation necessary for his maintenance, but not to exceed \$200 a month. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 539, amended Pub. L. 90-83, § 1(54), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, § 7, Sept. 7, 1974, 88 Stat. 1145.)

### **§ 8112. Maximum and minimum monthly payments**

Except as provided by section 8138 of this title, the monthly rate of compensation for disability, including augmented compensation under

section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS-15, and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS-2 or the amount of the monthly pay of the employee, whichever is less. (Pub. L. 89-554 Sept. 6, 1966, 80 Stat. 540, amended Pub. L. 90-83, § 1(55), Sept. 11, 1967, 81 Stat. 210.)

### § 8113. Increase or decrease of basic compensation

#### (a) If an individual—

(1) was a minor or employed in a learner's capacity at the time of injury; and

(2) was not physically or mentally handicapped before the injury;

the Secretary of Labor, on review under section 8128 of this title after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 540, amended Pub. L. 90-83, § 1(100), Sept. 11, 1967, 81 Stat. 220; Pub. L. 93-416, § 8, Sept. 7, 1974, 88 Stat. 1145.)

### § 8114. Computation of pay

#### (a) For the purpose of this section—

(1) "overtime pay" means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of work-time, as observed by the employing establishment; and

(2) "year" means a period of 12 calendar months, or the equivalent thereof as specified by regulations prescribed by the Secretary of Labor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earnings. However, for so much of a period of total disability as does not exceed 90 calendar days from the date of the beginning of compensable disability, the compensation, in the discretion of the Secretary of Labor, may be computed on the basis of the actual daily wage of employee at the time of injury in which event he may be paid compensation for the days he would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay—

(A) was fixed, the average annual earnings are the annual rate of pay; or

(B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment, or the average thereof if the daily wage has fluctuated, by 300 if he was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5½-day week, and 260 if employed on the basis of a 5-day week.

(2) If the employee did not work in employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the same class working substantially the whole immediately preceding year in the same or similar employment by the United States in the same or neighboring place, as determined under paragraph (1) of this subsection.

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury having regard to the previous earnings of the employee in Federal employment, and of other employees of the United States in the same or most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee, or other relevant factors. However, the average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding his injury.

(4) If the employee served without pay or at nominal pay, paragraphs (1), (2), and (3) of this subsection apply as far as practicable, but the average annual earnings of the employee may not exceed the minimum rate of basic pay for GS-15. If the average annual earnings cannot be determined reasonably and fairly in the manner otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of \$3,600 a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money, and premium pay under section 5545(c)(1) of this title are included as part of the pay, but account is not taken of—

(1) overtime pay;

(2) additional pay or allowance authorized outside the United States because of differential in cost of living or other special circumstances; or

(3) bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service in time of war. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 540, amended Pub. L. 89-737, § 1(1), Nov. 2, 1966, 80 Stat. 1164.)

### § 8115. Determination of wage-earning capacity

(a) In determining compensation for partial disability, except permanent partial disability compensable under sections 8107-8109 of this title, the wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to—

- (1) the nature of his injury;
- (2) the degree of physical impairment;
- (3) his usual employment;
- (4) his age;
- (5) his qualifications for other employment;
- (6) the availability of suitable employment; and
- (7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition.

(b) Section 8114(d) of this title is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 542.)

### § 8116. Limitations on right to receive compensation

(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States, except—

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy, or Air Force;
- (3) other benefits administered by the Veterans' Administration unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code.

However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(b) An individual entitled to benefits under this subchapter because of his injury, or because of the death of an employee, who also is entitled to receive from the United States under a provision of statute other than this subchapter payments or benefits for that injury or death (except proceeds of an insurance policy), because of service by him (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he will receive. The individual

shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Secretary of Labor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 542, amended Pub. L. 90-83; § 1(56). Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, § 9, Sept. 7, 1974, 88 Stat. 1145.)

### § 8117. Time of accrual of right

An employee is not entitled to compensation for the first 3 days of temporary disability, except—

- (1) when the disability exceeds 14 days;
- (2) when the disability is followed by permanent disability; or
- (3) as provided by sections 8103 and 8104 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; amended Pub. L. 93-416, § 10, Sept. 7, 1974, 88 Stat. 1145.)

### § 8118. Continuation of pay; election to use annual or sick leave

(a) The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E)), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a) (2) of this title.

(b) Continuation of pay under this subchapter shall be furnished—

- (1) without a break in time unless controverted under regulations of the Secretary;
- (2) for a period not to exceed 45 days; and
- (3) under accounting procedures and such other regulations as the Secretary may require.

(c) An employee may use annual or sick leave to his credit at the time the disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title do not begin to run, until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends.

(d) If a claim under subsection (a) is denied by the Secretary, payments under this section shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of title 5, United States Code.

(e) Payments under this section shall not be considered as compensation as defined by section 8101(12) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; amended Pub. L. 93-416, § 11, Sept. 7, 1974, 88 Stat. 1146.)

### § 8119. Notice of injury or death

An employee injured in the performance of his duty, or someone on his behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in section 8133 of this title, or someone on his behalf. A notice of injury or death shall—

- (a) be given within 30 days after the injury or death;
- (b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;
- (c) be in writing;
- (d) state the name and address of the employee;
- (e) state the year, month, day, and hour when and the particular locality where the injury or death occurred;
- (f) state the cause and nature of the injury, or, in the case of death, the employment factors believed to be the cause; and
- (g) be signed by and contain the address of the individual giving the notice.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; amended Pub. L. 93-416, Sept. 7, 1974, 88 Stat. 1146.)

### § 8120. Report of injury

Immediately after an injury to an employee which results in his death or probable disability, his immediate superior shall report to the Secretary of Labor. The Secretary may—

- (1) prescribe the information that the report shall contain;
- (2) require the immediate superior to make supplemental reports; and
- (3) obtain such additional reports and information from employees as are agreed on by the Secretary and the head of the employing agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543.)

### § 8121. Claim

Compensation under this subchapter may be allowed only if an individual or someone on his behalf makes claim therefor. The claim shall—

- (1) be made in writing within the time specified by section 8122 of this title;
- (2) be delivered to the office of the Secretary of Labor or to an individual whom the Secretary may designate by regulation, or deposited in the mail properly stamped and addressed to the Secretary or his designee;
- (3) be on a form approved by the Secretary;
- (4) contain all information required by the Secretary;
- (5) be sworn to by the individual entitled to compensation or someone on his behalf; and
- (6) except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

The Secretary may waive paragraphs (3)-(6) of this section for reasonable cause shown. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 543; amended Pub. L. 93-416, § 13, Sept. 7, 1974, 88 Stat. 1147.)

**§ 8122. Time for making claim**

(a) An original claim for compensation for disability or death must be filed within 3 years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if claim is not filed within that time unless—

(1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of the on-the-job injury or death; or

(2) written notice of injury or death as specified in section 8119 of this title was given within 30 days.

(b) In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not—

(1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or

(2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or

(3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 544, amended Pub. L. 90-83, § 1(57), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93-416, § 14, Sept. 7, 1974, 88 Stat. 1147.)

**§ 8123. Physical examinations**

(a) An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

(b) An employee is entitled to be paid expenses incident to an examination required by the Secretary which in the opinion of the Secretary are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.

(c) The Secretary shall fix the fees for examinations held under this section by physicians not employed by or under contract to the United States to furnish medical services to employees. The fees, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.

(d) If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 544.)

#### § 8124. Findings and award; hearings

(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against payment of compensation under this subchapter after—

(1) considering the claim presented by the beneficiary and the report furnished by the immediate superior; and

(2) completing such investigation as he considers necessary.

(b) (1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary. At the hearing, the claimant is entitled to present evidence in further support of his claim. Within 30 days after the hearing ends, the Secretary shall notify the claimant in writing of his further decision and any modifications of the award he may make and of the basis of his decision.

(2) In conducting the hearing, the representative of the Secretary is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of this title except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he shall receive such relevant evidence as the claimant adduces and such other evidence as he determines necessary or useful in evaluating the claim. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545, amended Pub. L. 90-83, § 1(58), Sept. 11, 1967, 81 Stat. 210.)

#### § 8125. Misbehavior at proceedings

If an individual—

(1) disobeys or resists a lawful order or process in proceedings under this subchapter before the Secretary of Labor or his representative; or

(2) misbehaves during a hearing or so near the place of hearing as to obstruct it;

the Secretary or his representative shall certify the facts to the district court having jurisdiction in the place where he is sitting. The court, in a summary manner, shall hear the evidence as to the acts complained of and if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the court, or commit the individual on the same conditions as if the forbidden act had occurred with reference to the process of or in the presence of the court. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

**§ 8126. Subpenas; oaths; examination of witnesses**

The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may—

- (1) issue subpenas for and compel the attendance of witnesses within a radius of 100 miles;
- (2) administer oaths;
- (3) examine witnesses; and
- (4) require the production of books, papers, documents, and other evidence.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

**§ 8127. Representation; attorneys' fees**

(a) A claimant may authorize an individual to represent him in any proceeding under this subchapter before the Secretary of Labor.

(b) A claim for legal or other services furnished in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the Secretary. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

**§ 8128. Review of award**

(a) The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review, may—

- (1) end, decrease, or increase the compensation previously awarded; or
- (2) award compensation previously refused or discontinued.

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is—

- (1) final and conclusive for all purposes and with respect to all questions of law and fact; and
- (2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

Credit shall be allowed in the accounts of a certifying or disbursing official for payments in accordance with that action. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 545.)

**§ 8129. Recovery of overpayments**

(a) When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the adjustment is completed, adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when—

- (1) adjustment or recovery of the amount is waived under subsection (b) of this section; or

(2) adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546.)

### § 8130. Assignment of claim

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546.)

### § 8131. Subrogation of the United States

(a) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the United States to pay damages, the Secretary of Labor may require the beneficiary to—

(1) assign to the United States any right of action he may have to enforce the liability or any right he may have to share in money or other property received in satisfaction of that liability; or

(2) prosecute the action in his own name.

An employee required to appear as a party or witness in the prosecution of such an action is in active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his own name when required by the Secretary is not entitled to compensation under this subchapter.

(c) The Secretary may prosecute or compromise a cause of action assigned to the United States. When the Secretary realizes on the cause of action, he shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payments of compensation payable for the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(d) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in the Panama Canal Company to pay damages under the law of a State, a territory or possession of the United States, the District of Columbia, or a foreign country, compensation is not payable until the individual entitled to compensation—

(1) releases to the Panama Canal Company any right of action he may have to enforce the liability of the Panama Canal Company; or

(2) assigns to the United States any right he may have to share in money or other property received in satisfaction of the liability of the Panama Canal Company.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 546, amended Pub. L. 90-83, § 1(60), Sept. 11, 1967, 81 Stat. 211.)

### § 8132. Adjustment after recovery from a third person

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a benefici-

ary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as the result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury. No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States. The amount refunded to the United States shall be credited to the Employes' Compensation Fund. If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States for the same injury. However, the beneficiary is entitled to retain at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution an amount equivalent to a reasonable attorney's fee proportionate to the refund to the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547, amended Pub. L. 90-83, § 1(61), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, § 15, Sept. 7, 1974, 88 Stat. 1147.)

### § 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.
- (3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.
- (4) To the parents, if there is no widow, widower, or child, as follows—

(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) 20 percent to each if both were wholly dependent; or

(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows—

(A) 20 percent if one was wholly dependent on the employee at the time of death;

(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or

(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until—

(1) a widow, or widower dies or remarries before reaching age 60;

(2) a child, a brother, a sister, or a grandchild dies or marries or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or

(3) a parent or grandparent dies or marries or ceases to be dependent.

Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or a grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed—

(1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146g of this title; or

(2) 75 percent of the monthly pay of the maximum rate of basic pay for GS-15.

(f) Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of section 8101(1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547, amended Pub. L. 90-83, § 1(62), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §§ 16(a), 17, 18, Sept. 7, 1974, 88 Stat. 1147-48.)

**§ 8134. Funeral expenses; transportation of body**

(a) If death results from an injury sustained in the performance of duty, the United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed \$800, in the discretion of the Secretary of Labor.

(b) The body of an employee whose home is in the United States, in the discretion of the Secretary, may be embalmed and transported in a hermetically sealed casket to his home or last place of residence at the expense of the Employees' Compensation Fund if—

(1) the employee dies from—

(A) the injury while away from his home or official station or outside the United States; or

(B) from other causes while away from his home or official station for the purpose of receiving medical or other services, appliances, supplies, or examination under this subchapter; and

(2) the relatives of the employee request the return of his body. If the relatives do not request the return of the body of the employee, the Secretary may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral, and burial expenses. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 548.)

**§ 8135. Lump-sum payment**

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if—

(1) the monthly payment to the beneficiary is less than \$50 a month;

(2) the beneficiary is or is about to become a nonresident of the United States; or

(3) the Secretary of Labor determines that it is for the best interest of the beneficiary.

The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage, before reaching age 60 a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the remarriage. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 548, amended Pub. L. 90-83, § 1(63), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, §§ 16(b), 19, 20, Sept. 7, 1974, 88 Stat. 1149.)

**§ 8136. Initial payments outside the United States**

If an employee is injured outside the continental United States, the Secretary of Labor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the United States designated by the Secretary for that purpose in the locality in which the employee was employed or the injury incurred. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 549.)

**§ 8137. Compensation for noncitizens and nonresidents**

(a) When the Secretary of Labor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulation, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by—

(1) the adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or

(2) establishing special schedules of compensation for injury, death, and loss of use of members and functions of the body for specific classes of employees, areas, and places.

Irrespective of the basis adopted, the Secretary may at any time—

(A) modify or limit the maximum monthly and total aggregate payments for injury, death, and medical or other benefits;

(B) modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) modify, limit, or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Secretary or his designee may—

(1) make a lump-sum award in the manner prescribed by section 8135 of this title when he or his designee considers it to be for the best interest of the United States; and

(2) compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law.

Compensation paid under this subsection is instead of all other compensation from the United States for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and is satisfaction of all liability of the United States in respect to the particular injury or death.

(c) The Secretary may delegate to an employee or agency of the United States, with such limitations and right of review as he considers advisable, authority to process, adjudicate, commute by lump-

sum award, compromise, and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance with such regulations and instructions as the Secretary considers necessary. For this purpose, the Secretary may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Secretary may waive the application of this subchapter in whole or in part and for such period or periods as he may fix if he finds that—

- (1) conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or
- (2) claimants under this section are alien enemies.

(e) The Secretary may apply this section retrospectively with adjustment of compensation and benefits as he considers necessary and proper. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 549.)

#### **§ 8138. Minimum limit modification for noncitizens and aliens**

(a) Except as provided by subsection (b) of this section, the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title do not apply in the case of a noncitizen employee, or a class or classes of noncitizen employees, who sustain injury outside the continental United States. The Secretary of Labor may establish a minimum monthly pay on which death compensation is computed in the case of a class or classes of such noncitizen employees.

(b) The President may remove or modify the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title in the case of an alien employee, or a class or classes of alien employees, of the Canal Zone Government or the Panama Canal Company. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 550.)

#### **§ 8139. Employees of the District of Columbia**

Compensation awarded to an employee of the government of the District of Columbia shall be paid in the manner provided by statute for the payment of the general expenses of the government of the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 550.)

#### **§ 8140. Members of the Reserve Officers' Training Corps**

(a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers' Training Corps of the Army, Navy, or Air Force who suffers disability or death from an injury incurred in line of duty—

- (1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or
- (2) while performing authorized travel to or from, or while attending, field training or a practice cruise under chapter 103 of title 10.

(b) For the purpose of this section, an injury is incurred in line of duty only if it is the proximate result of the performance of military training by the member concerned, or of his travel to or from that

training during the periods specified by subsection (a)(2) of this section. A member or applicant for membership who contracts a disease or illness which is the proximate result of the performance of training during the periods specified by subsection (a)(2) of this section is considered for the purpose of this section to have been injured in line of duty during that period. Subject to review by the Secretary of Labor, the Secretary of the military department concerned, under regulations prescribed by him, shall determine whether or not an injury, disease, or illness was incurred or contracted in line of duty and was the proximate result of the performance of military training by the member concerned or of his travel to or from that military training.

(c) In computing the compensation payable under this section, the monthly pay received by the injured or deceased individual, in cash and kind, is deemed \$150.

(d) The Secretary of the military department concerned shall cooperate fully with the Department of Labor in the prompt investigation and prosecution of a case involving the legal liability of a third party other than the United States.

(e) An individual may not receive disability benefits under this section while on active duty with the armed forces, but these benefits may be reinstated when the individual is released from that active duty.

(f) Expenses incurred by a military department in providing hospitalization, medical and surgical care, necessary transportation incident to that hospitalization or medical and surgical care, or in connection with a funeral and burial on behalf of an individual covered by subsection (a) of this section shall be reimbursed by the Secretary of Labor from the Employees' Compensation Fund in accordance with this subchapter. However, reimbursement may not be made for hospitalization or medical or surgical care provided an individual while attending field training or a practice cruise under chapter 103 of title 10. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 550.)

### § 8141. Civil Air Patrol volunteers

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet.

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—

(1) the monthly pay of a member is deemed \$300 for the purpose of computing compensation for disability or death;

(2) the percentages applicable to payments under section 8133 of this title are—

(A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;

(B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and

(C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(3) a payment may not be made under section 8133(a)(5) of this title;

(4) "performance of duty" means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and

(5) the Secretary of Labor or his designee shall inform the Secretary of Health, Education, and Welfare when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Secretary of Health, Education, and Welfare shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.

(c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 551.)

## § 8142. Peace Corps volunteers

(a) For the purpose of this section, "volunteer" means—

(1) a volunteer enrolled in the Peace Corps under section 2504 of title 22;

(2) a volunteer leader enrolled in the Peace Corps under section 2505 of title 22; and

(3) an applicant for enrollment as a volunteer or volunteer leader during a period of training under section 2507(a) of title 22 before enrollment.

(b) Subject to the provisions of this section, this subchapter applies to a volunteer, except that entitlement to disability compensation payments does not commence until the day after the date of termination of his service as a volunteer.

(c) For the purpose of this subchapter—

(1) a volunteer is deemed receiving monthly pay at the minimum rate for GS-7;

(2) a volunteer leader referred to by section 2505 of title 22, or a volunteer with one or more minor children as defined in section 2504 of title 22, is deemed receiving monthly pay at the minimum rate for GS-11;

(3) an injury suffered by a volunteer when he is outside the several States and the District of Columbia is deemed proximately caused by his employment, unless the injury or disease is—

- (A) caused by willful misconduct of the volunteer;
- (B) caused by the volunteer's intention to bring about the injury or death of himself or of another; or
- (C) proximately caused by the intoxication of the injured volunteer; and

(4) the period of service of an individual as a volunteer includes—

- (A) any period of training under section 2507(a) of title 22 before enrollment as a volunteer; and

- (B) the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 552, amended Pub. L. 90-83, § 1(64), Sept. 11, 1967, 81 Stat. 212; Pub. L. 93-416, § 23(a), Sept. 7, 1974, 88 Stat. 1150.)

### **§ 8143. Job Corps enrollees; volunteers in service to America**

(a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection—

- (1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS-2;

- (2) section 8113(a) of this title applies to an enrollee; and

- (3) "performance of duty" does not include an act of an enrollee while absent from his assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from the post of duty) authorized by or under the direction and supervision of the Job Corps.

(b) This subchapter applies to a volunteer in service to America who receives either a living allowance or a stipend under part A of subchapter VIII of chapter 34 of title 42, with respect to that service and training, to the same extent as enrollees of the Job Corps under subsection (a) of this section. However, for the purpose of the computation described in subsection (a)(1) of this section, the monthly pay of a volunteer is deemed that received at the minimum rate for GS-7. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553, amended Pub. L. 90-83, § 1(65), Sept. 11, 1967, 81 Stat. 212; Pub. L. 90-623, § 1(19), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 93-416, § 8, Sept. 7, 1974, 88 Stat. 1145.)

### **§ 8143a. Members of the National Teacher Corps**

Subject to the provisions of this section, this subchapter applies to a member of the National Teacher Corps. In administering this subchapter for a member covered by this section—

- (1) "performance of duty" does not include an act of a member while—

- (A) on authorized leave; or

(B) absent from his assigned post of duty, except while participating in an activity authorized by or under the direction or supervision of the Commissioner of Education; and

(2) in computing compensation for disability or death, the monthly pay of a member is deemed his actual pay or that received at the minimum rate for GS-6, whichever is greater.

(Added Pub. L. 90-83, § 1(66)(A), Sept. 11, 1967, 81 Stat. 212.)

#### § 8144. Student-employees

A student-employee as defined by section 5351 of this title who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553.)

#### § 8145. Administration

The Secretary of Labor shall administer, and decide all questions arising under, this subchapter. He may—

(1) appoint employees to administer this subchapter; and

(2) delegate to any employee of the Department of Labor any of the powers conferred on him by this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553.)

#### § 8146. Administration for the Canal Zone and The Alaska Railroad

(a) The President, from time to time, may transfer the administration of this subchapter—

(1) so far as employees of the Canal Zone Government and of the Panama Canal Company are concerned to the Governor of the Canal Zone; and

(2) so far as employees of The Alaska Railroad are concerned to the general manager of The Alaska Railroad.

(b) When administration is transferred under subsection (a) of this section, the expenses incident to physical examinations which are payable under section 8123 of this title shall be paid from appropriations for the Canal Zone Government or for The Alaska Railroad or from funds of the Panama Canal Company, as the case may be, instead of from the Employees' Compensation Fund. The President may authorize the Governor of the Canal Zone and the general manager of The Alaska Railroad to pay the compensation provided by this subchapter, including medical, surgical, and hospital services and supplies under section 8103 of this title and the transportation and burial expenses under sections 8103 and 8134 of this title, from appropriations for the Canal Zone Government and for The Alaska Railroad, and these appropriations shall be reimbursed for the payments by transfer of funds from the Employees' Compensation Fund.

(c) The President may authorize the Governor of the Canal Zone to waive, at his discretion, the making of the claim required by section 8121 of this title in the case of compensation to an employee of the Canal Zone Government or of the Panama Canal Company for temporary disability, either total or partial.

(d) When administration is transferred under subsection (a) of this section to the general manager of The Alaska Railroad, the Secretary of Labor is not divested of jurisdiction and a claimant is entitled to appeal from the decision of the general manager of The Alaska Railroad to the Secretary of Labor. The Secretary on receipt of an appeal shall, or on his own motion may, review the decision of the general manager of The Alaska Railroad, and in accordance with the facts found on review may proceed under section 8128 of this title. The Secretary shall provide the form and manner of taking an appeal.

(e) The same right of appeal exists with respect to claims filed by employees of the Canal Zone Government and of the Panama Canal Company or their dependents in case of death, as is provided with respect to the claims of other employees to whom this subchapter applies, under section 8149 of this title. The Employees' Compensation Appeals Board referred to by section 8149 of this title has jurisdiction, under regulations prescribed by the Secretary, over appeals relating to claims of the employees or their dependents. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 553.)

#### **§ 8146a. Cost-of-living adjustment of compensation**

(a) Each month the Secretary of Labor shall determine the percent change in the price index. Effective the first day of the month which begins after the price index change equals a rise of at least 3 percent for 3 consecutive months over the price index for the latest base month, compensation payable on account of disability or death which occurred more than 1 year before that first day shall be increased by the percent rise in the price index (calculated on the highest level of the price index during the 3 consecutive months) adjusted to the nearest one-tenth of 1 percent.

(b) The regular periodic compensation payments after adjustment under this section shall be fixed at the nearest dollar. However, the regular periodic compensation after adjustment shall reflect an increase of at least \$1.

(c) This section shall be applicable to persons excluded by section 15 of the Federal Employees' Compensation Act Amendments of 1966 (Public Law 89-488) under the following statutes: Act of February 15, 1934 (48 Stat. 351); Act of June 26, 1936 (49 Stat. 2035); Act of April 8, 1935 (49 Stat. 115); Act of July 25, 1942 (56 Stat. 710); Public Law 84-955 (August 3, 1956); Public Law 77-784 (December 2, 1942); Public Law 84-879 (August 1, 1956); Public Law 80-896 (July 3, 1948); Act of September 8, 1959 (73 Stat. 469). Benefit payments to these persons shall initially be increased by the total percentage of the increases in the price index from the base month of July 1966, to the next most recent base month following the effective date of this subsection. (Added Pub. L. 90-83, § 1(67)(A), Sept. 11, 1967, 81 Stat. 212; amended Pub. L. 93-416, §§ 21, 24, Sept. 7, 1974, 88 Stat. 1149-50.)

#### **§ 8147. Employees' Compensation Fund**

(a) There is in the Treasury of the United States the Employees' Compensation Fund which consists of sums that Congress, from time to time, may appropriate for or transfer to it, and amounts that other-

wise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. The Secretary of Labor shall submit annually to the Office of Management and Budget estimates of appropriations necessary for the maintenance of the Fund. For the purpose of this subsection, "administrative expenses" does not include expenses for legal services performed by or for the Secretary under sections 8131 and 8132 of this title.

(b) Before August 15 of each year, the Secretary shall furnish to each agency and instrumentality of the United States having an employee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof a statement showing the total cost of benefits and other payments made from the Employees' Compensation Fund during the preceding July 1 through June 30 expense period on account of the injury or death of employees or individuals under the jurisdiction of the agency or instrumentality. Each agency and instrumentality shall include in its annual budget estimates for the fiscal year beginning in the next calendar year a request for an appropriation in an amount equal to the costs. Sums appropriated pursuant to the request shall be deposited in the Treasury to the credit of the Fund within 30 days after they are available. An agency or instrumentality not dependent on an annual appropriation shall make the deposit required by this subsection from funds under its control during the first fifteen days of October following the furnishing of the statement. If an agency or instrumentality (or part or function thereof) is transferred to another agency or instrumentality, the cost of compensation benefits and other expenses paid from the Fund on account of the injury or death of employees of the transferred agency or instrumentality (or part or function) shall be included in costs of the receiving agency or instrumentality.

(c) In addition to the contributions for the maintenance of the Employees' Compensation Fund required by this section, the United States Postal Service, or a mixed ownership corporation as defined by section 856 of title 31, or any other corporation or agency or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to or as provided by sections 841-869 of title 31, shall pay an additional amount for its fair share of the cost of administration of this subchapter as determined by the Secretary. With respect to these corporations, agencies, and instrumentalities, the charges billed by the Secretary under this section shall include an additional amount for these costs, which shall be paid into the Treasury as miscellaneous receipts from the sources authorized and in the manner otherwise provided by this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 554, amended Pub. L. 90-83, § 1(68), Sept. 11, 1967, 81 Stat. 213; Pub. L. 93-416, §§ 25, 26, Sept. 7, 1974, 88 Stat. 1150; Pub. L. 94-273, § 42, April 21, 1976, 90 Stat. 381.)

**§ 8148. Repealed. Pub. L. 90-83, § 1(69), Sept. 11, 1967, 81 Stat. 213.**

**§ 8149. Regulations**

The Secretary of Labor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter in-

cluding rules and regulations for the conduct of hearings under section 8124 of this title. The rules and regulations shall provide for an Employees' Compensation Appeals Board of three individuals designated or appointed by the Secretary with authority to hear and, subject to applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees. In adjudicating claims under section 8146 of this title, the Secretary may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555, amended Pub. L. 90-83, § 1(71), Sept. 11, 1967, 81 Stat. 213.)

#### **§ 8150. Effect on other statutes**

(a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

(b) Section 8141 of this title and section 9441 of title 10 do not confer military or veteran status on any individual. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555.)

#### **§ 8151. Civil service retention rights**

(a) In the event the individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management—

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his former or equivalent position within such department or agency, or within any other department or agency.

(Pub. L. 93-416, § 22, Sept. 7, 1974, 88 Stat. 1149; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## SUBCHAPTER II—EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

### § 8171. Compensation for work injuries; generally

(a) Chapter 18 of title 33 applies with respect to disability or death resulting from injury, as defined by section 902(2) of title 33, occurring to an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is—

- (1) a United States citizen or a permanent resident of the United States or a territory or possession of the United States employed outside the continental United States; or
- (2) employed inside the continental United States.

However, that part of section 903(a) of title 33 which follows the first comma does not apply to such an employee.

(b) For the purpose of this subchapter, the term “employer” in section 902(4) of title 33 includes the nonappropriated fund instrumentalities described by section 2105(c) of this title.

(c) The Secretary of Labor may—

- (1) extend compensation districts established under section 939(b) of title 33, or establish new districts to include the areas outside the continental United States; and
- (2) assign to each district one or more deputy commissioners as the Secretary considers advisable.

(d) Judicial proceedings under sections 918 and 921 of title 33 with respect to an injury or death occurring outside the continental United States shall be instituted in the district court within the territorial jurisdiction of which is located the office of the deputy commissioner having jurisdiction with respect to the injury or death. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 555.)

### § 8172. Employees not citizens or residents of the United States

In case of disability or death, resulting from injury, as defined by section 902(2) of title 33, occurring to an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is—

- (1) not a citizen or permanent resident of the United States or a territory or possession of the United States; and

(2) employed outside the continental United States; compensation shall be provided in accordance with regulations prescribed by the Secretary of the military department concerned and approved by the Secretary of Defense or regulations prescribed by the Secretary of the Treasury, as the case may be. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 556.)

### § 8173. Liability under this subchapter exclusive

The liability of the United States or of a nonappropriated fund instrumentality described by section 2105(c) of this title, with respect

to the disability or death resulting from injury, as defined by section 902(2) of title 33, of an employee referred to by sections 8171 and 8172 of this title, shall be determined as provided by this subchapter. This liability is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the disability or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability status. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 556.)

## SUBCHAPTER III—LAW ENFORCEMENT OFFICERS NOT EMPLOYED BY THE UNITED STATES

### § 8191. Determination of eligibility

The benefits of this subchapter are available as provided in this subchapter to eligible law enforcement officers (referred to in this subchapter as "eligible officers") and their survivors. For the purposes of this subchapter, an eligible officer is any person who is determined by the Secretary of Labor in his discretion to have been on any given occasion—

(1) a law enforcement officer and to have been engaged on that occasion in the apprehension or attempted apprehension of any person—

(A) for the commission of a crime against the United States, or

(B) who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or

(C) who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) a law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime; or

(3) a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in section 8101(1), and to have sustained on that occasion a personal injury for which the United States would be required under subchapter I of this chapter to pay compensation if he had been on that occasion such an employee engaged in the performance of his duty. No person otherwise eligible to receive a benefit under this subchapter because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commission of a crime against a sovereignty other than United States. (Added Pub. L. 90-291, § 1(a), Apr. 19, 1968, 82 Stat. 98, amended Pub. L. 90-623, § 1(20), Oct. 22, 1968, 82 Stat. 1313.)

### § 8192. Benefits

(a) BENEFITS IN EVENT OF INJURY.—The Secretary of Labor shall furnish to any eligible officer the benefits to which he would have been entitled under subchapter I of this chapter if, on the occasion giving rise to his eligibility, he had been an employee as defined in section 8101(1) engaged in the performance of his duty, reduced or adjusted

as the Secretary of Labor in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which he would have been entitled to receive but for this subchapter) by virtue of his actual employment on that occasion. When an enforcement officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) **BENEFITS IN EVENT OF DEATH.**—The Secretary of Labor shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee as defined in section 8101(1) engaged in the performance of his duty on the occasion giving rise to his eligibility, and the comparable benefits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subchapter) by virtue of the officer's actual employment on that occasion. When an enforcement officer has contributed to a survivor's benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivor's benefits coverage for the individual officer. (Added Pub. L. 90-291, § 1(a), Apr. 19, 1968, 82 Stat. 99.)

### **§ 8193. Administration**

(a) **DEFINITIONS AND RULES OF CONSTRUCTION.**—For the purpose of this subchapter—

(1) The term "Attorney General" includes any person to whom the Attorney General has delegated any function pursuant to subsection (b) of this section.

(2) The term "Secretary of Labor" includes any person to whom the Secretary of Labor has delegated any function pursuant to subsection (b) of this section.

(b) **DELEGATION.**—

(1) The Attorney General may delegate to any division, officer, or employee of the Department of Justice any function conferred upon the Attorney General by this subchapter.

(2) The Secretary of Labor may delegate to any bureau, officer, or employee of the Department of Labor any function conferred upon the Secretary of Labor by this subchapter.

(c) **APPLICATIONS.**—An application for any benefit under this subchapter may be made only—

(1) to the Secretary of Labor

(2) by

(A) any eligible officer or survivor of an eligible officer.

(B) any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his estate, or any of his survivors, or

- (C) any association of law enforcement officers which is acting on behalf of an eligible officer or any of his survivors;
- (3) within five years after the injury or death; and
- (4) in such form as the Secretary of Labor may require.

(d) **CONSULTATION WITH ATTORNEY GENERAL AND OTHER AGENCIES.**—The Secretary of Labor may refer any application received by him pursuant to this subchapter to the Attorney General for his assistance, comments and advice as to any determination required to be made pursuant to paragraph (1), (2), or (3) of section 8191. To insure that all Federal assistance under this subchapter is carried out in a co-ordinated manner, the Secretary of Labor is authorized to request any Federal department or agency to supply any statistics, data, or any other materials he deems necessary to carry out his functions under this subchapter. Each such department or agency is authorized to cooperate with the Secretary of Labor and, to the extent permitted by law, to furnish such materials to him.

(e) **COOPERATION WITH STATE AGENCIES.**—The Secretary of Labor shall cooperate fully with the appropriate State and local officials, and shall take all other practicable measures to assure that the benefits of this subchapter are made available to eligible officers and their survivors with a minimum of delay and difficulty.

(f) **APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this subchapter. (Added Pub. L. 90-291, § 1(a), Apr. 19, 1968, 82 Stat. 99, amended Pub. L. 94-183, § 2(31), Dec. 31, 1975, 89 Stat. 1058.)

## **CHAPTER 83—RETIREMENT**

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**SEC.**

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## SUBCHAPTER I—GENERAL PROVISIONS

### **§ 8301. Uniform retirement date**

- (a) Except as otherwise specifically provided by this title or other statute, retirement authorized by statute is effective on the first day of the month following the month in which retirement would otherwise be effective.
- (b) Notwithstanding subsection (a) of this section, the rate of active or retired pay or allowance is computed as of the date retirement would have occurred but for subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 557.)

## SUBCHAPTER II—FORFEITURE OF ANNUITIES AND RETIRED PAY

### § 8311. Definitions

For the purpose of this subchapter—

(1) “employee” means—

- (A) an employee as defined by section 2105 of this title;
- (B) a Member of Congress as defined by section 2106 of this title and a Delegate to Congress;
- (C) a member or former member of a uniformed service; and
- (D) an individual employed by the government of the District of Columbia;

(2) “annuity” means a retirement benefit, including a disability insurance benefit and a dependent’s or survivor’s benefit under subchapter II of chapter 7 of title 42, and a monthly annuity under section 228b or 228e of title 45, payable by an agency of the Government of the United States or the government of the District of Columbia on the basis of service as a civilian employee and other service which is creditable to an employee toward the benefit under the statute, regulation, or agreement which provides the benefit, but does not include—

(A) a benefit provided under statutes administered by the Veterans’ Administration;

(B) pay or compensation which may not be diminished under section 1 of Article III of the Constitution of the United States;

(C) that portion of a benefit payable under subchapter II of chapter 7 of title 42 which would be payable without taking into account, for any of the purposes of that subchapter, including determinations of periods of disability under section 416(i) of title 42, pay for services as an employee;

(D) monthly annuity awarded under section 228b or 228e of title 45 before September 26, 1961, whether or not computed under section 228c(e) of title 45;

(E) that portion of an annuity awarded under section 228b or 228e of title 45 after September 25, 1961, which would be payable without taking into account military service creditable under section 228c-1 of title 45;

(F) a retirement benefit, including a disability insurance benefit and a dependent’s or survivor’s benefit under subchapter II of chapter 7 of title 42, awarded before September 1, 1954, to an individual or his survivor or beneficiary, insofar as the individual, before September 1, 1954—

(i) was convicted of an offense named by subsection

(b) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8314 or 8315(a)(1) of this title; or

(G) a retirement benefit, including a disability insurance benefit and a dependent's or survivor's benefit under subchapter II of chapter 7 of title 42, awarded before September 26, 1961, to an individual or his survivor or beneficiary, insofar as the individual, before September 26, 1961—

(i) was convicted of an offense named by subsection

(c) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8315(a)(2) of this title; and

(3) "retired pay" means retired pay, retirement pay, retainer pay, or equivalent pay, payable under a statute to a member or former member of a uniformed service, and an annuity payable to an eligible beneficiary of the member or former member under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), but does not include—

(A) a benefit provided under statutes administered by the Veterans' Administration;

(B) retired pay, retirement pay, retainer pay, or equivalent pay, awarded before September 1, 1954, to an individual, insofar as the individual, before September 1, 1954—

(i) was convicted of an offense named by subsection

(b) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8314 or 8315(a)(1) of this title;

(C) retired pay, retirement pay, retainer pay, or equivalent pay, awarded before September 26, 1961, to an individual, insofar as the individual, before September 26, 1961—

(i) was convicted of an offense named by subsection

(c) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8315(a)(2) of this title; or

(D) an annuity payable to an eligible beneficiary of an individual under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), if the annuity was awarded to the beneficiary, or if retired pay was awarded to the individual, before September 26, 1961, insofar as the individual, on the basis of whose service the annuity was awarded, before September 26, 1961—

(i) was convicted of an offense named by section 8312 of this title, to the extent provided by that section; or

(ii) violated section 8314 or 8315 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 557.)

## § 8312. Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311 (2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.

The prohibition on payment of annuity or retired pay applies—

(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of conviction or after September 1, 1954, whichever is later; and

(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of the conviction or after September 26, 1961, whichever is later.

(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954:

(1) An offense within the purview of—

(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18;

(B) chapter 105 (relating to sabotage) of title 18;

(C) section 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 (recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18;

(D) section 10(b) (2), (3), or (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect August 30, 1954;

(E) section 16 (a) or (b) of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation; or

(F) an earlier statute on which a statute named by subparagraph (A), (B), or (C) of this paragraph (1) is based.

(2) An offense within the purview of—

(A) article 104 (aiding the enemy) or article 106 (spies) of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which article 104 or article 106, as the case may be, is based; or

(B) a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) not named by subparagraph (A) of this paragraph (2) on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4).

of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia—

(A) in falsely denying the commission of an act which constitutes an offense within the purview of—

(i) a statute named by paragraph (1) of this subsection; or

(ii) an article or statute named by paragraph (2) of this subsection insofar as the offense is within the purview of an article or statute named by paragraph (1) or (2)(A) of this subsection;

(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States; or

(C) in falsely testifying before a congressional committee in connection with a matter under inquiry before the congressional committee involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(4) Subornation of perjury committed in connection with the false denial or false testimony of another individual as specified by paragraph (3) of this subsection.

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—

(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or

(C) section 783 (conspiracy and communication or receipt of classified information) of title 50.

(2) An offense within the purview of a current article of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which the current article is based, as the case may be, on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia in falsely denying the commission of an act which constitutes an offense within the purview of a statute named by paragraph (1) of this subsection.

(4) Subornation of perjury committed in connection with the false denial of another individual as specified by paragraph (3) of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 559, amended Pub. L. 92-128, § 2(b), Sept. 25, 1971, 85 Stat. 348.)

### § 8313. Absence from the United States to avoid prosecution

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311 (2) and (3) of this title, if the individual—

(1) is under indictment, or has outstanding against him charges preferred under the Uniform Code of Military Justice—

(A) after July 31, 1956, for an offense named by section 8312(b) of this title; or

(B) after September 26, 1961, for an offense named by section 8312(c) of this title; and

(2) willfully remains outside the United States, or its territories and possessions including the Commonwealth of Puerto Rico, for more than 1 year with knowledge of the indictment or charges, as the case may be.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the end of the 1-year period and continues until—

(1) a nolle prosequi to the entire indictment is entered on the record or the charges are dismissed by competent authority;

(2) the individual returns and thereafter the indictment or charges is or are dismissed; or

(3) after trial by court or court-martial, the accused is found not guilty of the offense or offenses.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 561.)

### § 8314. Refusal to testify

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311 (2) and (3) of this title, if the individual, before, on, or after September 1, 1954, refused or refuses, or knowingly and willfully failed or fails, to appear, testify, or produce a book, paper, record, or other document, relating to his service as an employee, before a Federal grand jury, court of the United States, court-martial, or congressional committee, in a proceeding concerning—

(1) his past or present relationship with a foreign government; or

(2) a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the date of the failure or refusal of the individual, or after September 1, 1954, whichever is later. (Pub. L. 85-554, Sept. 6, 1966, 80 Stat. 562.)

### § 8315. Falsifying employment applications

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311 (2) and (3) of this title, if the individual knowingly and willfully made or makes a false, fictitious, or fraudulent statement or representation, or knowingly and willfully concealed or conceals a material fact—

(1) before, on, or after September 1, 1954, concerning his—

(A) past or present membership in, affiliation or association with, or support of the Communist Party, or a chapter, branch, or subdivision thereof, in or outside the United States, or other organization, party, or group advocating—

(i) the overthrow, by force, violence, or other unconstitutional means, of the Government of the United States;

(ii) the establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States; or

(iii) the right to strike against the United States;

(B) conviction of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(C) failure or refusal to appear, testify, or produce a book, paper, record, or other document, as specified by section 8314 of this title; or

(2) before, on, or after September 26, 1961, concerning his conviction of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection;

in a document executed by the individual in connection with his employment in, or application for, a civilian or military office or position in or under the legislative, executive, or judicial branch of the Government of the United States or the government of the District of Columbia.

(b) The prohibition on the payment of annuity or retired pay applies—

(1) with respect to matters specified by subsection (a)(1) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 1, 1954, whichever is later; and

(2) with respect to matters specified by subsection (a)(2) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 26, 1961, whichever is later.

(Pub. L. 85-554, Sept. 6, 1966, 80 Stat. 562.)

**§ 8316. Refund of contributions and deposits**

(a) When payment of annuity or retired pay is denied under this subchapter because an individual was convicted of an offense named by section 8312 of this title, to the extent provided by that section, or violated section 8314 or 8315 of this title—

(1) the amount, except employment taxes, contributed by the individual toward the annuity, less the amount previously refunded or paid as annuity benefits; and

(2) deposits made under section 1438 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953

(67 Stat. 504) to provide the eligible beneficiary with annuity for any period, less the amount previously paid as retired pay benefits;

shall be refunded, on appropriate application therefor—

(A) to the individual;

(B) if the individual is dead, to the beneficiary designated to receive refunds by or under the statute, regulation, or agreement under which the annuity, the benefits of which are denied under this subchapter, would have been payable; or

(C) if a beneficiary is not designated, in order of precedence prescribed by section 8342(c) of this title or section 2771 of title 10, as the case may be.

(b) A refund under subsection (a) of this section shall be made with interest at the rate and for the period provided under the statute, regulation, or agreement under which the annuity would have been payable. However, interest may not be computed—

(1) if the individual was convicted of an offense named by section 8312(b) of this title, or violated section 8314 or 8315(a)

(1) of this title, for the period after the conviction or commission of the violation, or after September 1, 1954, whichever is later; or

(2) if the individual was convicted of an offense named by section 8312(c) of this title, or violated section 8315(a)(2) of this title, for the period after the conviction or commission of the violation, or after September 26, 1961, whichever is later.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

**§ 8317. Repayment of annuity or retired pay properly paid; waiver**

(a) An individual, or his survivor or beneficiary, to whom payment of annuity is denied under this subchapter is not thereafter required to repay that part of the annuity otherwise properly paid to the individual, or to his survivor or beneficiary on the basis of the service of the individual, which is in excess of the aggregate amount of the contributions of the individual toward the annuity, with applicable interest.

(b) An individual, including an eligible beneficiary under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), to whom payment of retired pay is denied under this subchapter is not thereafter required to repay retired pay otherwise properly paid to the individual or beneficiary which is paid in violation of this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

**§ 8318. Restoration of annuity or retired pay**

- (a) If an individual who was convicted, before, on, or after September 1, 1954, of—  
    (1) an offense named by section 8312 of this title; or  
    (2) an offense constituting a violation of section 8314 or 8315 of this title;

is pardoned by the President, the right of the individual and his survivor or beneficiary to receive annuity or retired pay previously denied under this subchapter is restored as of the date of the pardon.

(b) The President may restore, effective as of the date he prescribes, the right to receive annuity or retired pay which is denied, before, on, or after September 1, 1954, under section 8314 or 8315 of this title, to the individual and to his survivor or beneficiary.

(c) Payment of annuity or retired pay which results from pardon or restoration by the President under subsection (a) or (b) of this section may not be made for a period before—

- (1) the date of pardon referred to by subsection (a) of this section; or  
    (2) the effective date of restoration referred to by subsection (b) of this section.

(d) Credit for a period of service covered by a refund under section 8316 of this title is allowed only after the amount refunded has been redeposited. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 563.)

**§ 8319. Removal of members of the uniformed services from rolls; restoration; reappointment**

(a) The President may drop from the rolls a member of a uniformed service who is deprived of retired pay under this subchapter.

(b) The President may restore—

- (1) military status to an individual dropped from the rolls to whom retired pay is restored under this subchapter or under section 2 of the Act of September 26, 1961 (75 Stat. 648); and  
    (2) all rights and privileges to the individual and his beneficiaries of which he or they were deprived because his name was dropped from the rolls.

(c) If the individual restored was a commissioned officer, the President alone may reappoint him to the grade and position on the retired list held when his name was dropped from the rolls. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

**§ 8320. Offense or violation committed in compliance with orders**

When it is established by satisfactory evidence that an individual—

- (1) was convicted of an offense named by section 8312 of this title; or

    (2) violated section 8314 or 8315 of this title;

as a result of proper compliance with orders issued, in a confidential relationship, by an agency or other authority of the Government of the United States or the government of the District of Columbia, the right to receive annuity or retired pay may not be denied. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

**§ 8321. Liability of accountable employees**

An accountable employee may not be held responsible for a payment made in violation of this subchapter when the payment made is in

due course and without fraud, collusion, or gross negligence. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

**§ 8322. Effect on other statutes**

This subchapter does not restrict authority under a statute, other than this subchapter, to deny or withhold benefits authorized by statute. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564.)

## SUBCHAPTER III—CIVIL SERVICE RETIREMENT

### § 8331. Definitions

For the purpose of this subchapter—

- (1) “employee” means—
  - (A) an employee as defined by section 2105 of this title;
  - (B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of Botanic Garden;
  - (C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;
  - (D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;
  - (E) a United States Commissioner whose total pay for services performed as Commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;
  - (F) an individual employed by a county committee established under section 590h(b) of title 16;
  - (G) an individual employed by the government of the District of Columbia;
  - (H) an individual employed by Gallaudet College;
  - (I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and
  - (J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

but does not include—

- (i) a justice or judge of the United States as defined by section 451 of title 28;
- (ii) an employee subject to another retirement system for Government employees;
- (iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

(v) a temporary employee of the Administrative Office of the United States Courts or of a court named by section 610 of title 28;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title; or

(ix) a student-employee as defined by section 5351 of this title.

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, "teacher" and "teaching position" have the meanings given them by section 901 of title 20;

(2) "Member" means a Member of Congress as defined by section 2106 of this title, and a Delegate to Congress, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(3) "basic pay" includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e-7 of title 2 and the provisions of law referred to by that subsection; and

(ii) section 60e-8, 60e-9, 60e-10, 60e-11, 60e-12, 60e-13, and 60e-14 of title 2;

(C) premium pay under section 5545(c)(1) of this title; and

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to base pay of the position as fixed by law or regulation except as provided by subparagraphs (B), (C) and (D) of this paragraph, retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is \$10,000;

(4) "average pay" means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) "Fund" means the Civil Service Retirement and Disability Fund;

(6) "disabled" and "disability" means totally disabled or total disability, respectively, for useful and efficient service in the grade or class of position last occupied by the employee or Member because of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part within 5 years before becoming so disabled;

(7) "Government" means the Government of the United States, the government of the District of Columbia, and Gallaudet College;

(8) "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) "annuitant" means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) "survivor" means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) "survivor annuitant" means a survivor who files claim for annuity;

(12) "service" means employment creditable under section 8332 of this title;

(13) "military service" means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States;

(14) "Member service" means service as a Member and includes the period from the date of the beginning of the term for which

elected or appointed to the date on which he takes office as a Member;

(15) "price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics;

(16) "base month" means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) "normal cost" means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and expressed as a level percentage of aggregate basic pay;

(18) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value; and

(B) the cash balance of the Fund on the books of the Treasury;

(19) "unfunded liability" means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined; and

(20) "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, "detention" includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention,

direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) "firefighter" means an employee the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position; and

(22) "bankruptcy judge" means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act adding this paragraph—

(A) who is serving as a United States bankruptcy judge on March 31, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or

(B) whose service as a United States bankruptcy judge during the transition period is terminated by reason of death or disability.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 564, amended Pub. L. 89-737, § 1(2), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90-83, § 1(72), Sept. 11, 1967, 81 Stat. 213; Pub. L. 90-623, § 1(21), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 91-93, §§ 101(3), 201(a), Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92-352, § 105(a), July 13, 1972, 86 Stat. 490; Pub. L. 93-350, § 2, July 12, 1974, 88 Stat. 355; Pub. L. 94-183, § 2(38), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2681.)

### § 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

(1) employment as a substitute in the postal field service;

(2) service in the Pan American Sanitary Bureau;

(3) subject to sections 8334(c) and 8339(i) of this title, service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;

(4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;

(5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;

(6) employment under section 709 of title 32, United States Code, or any prior corresponding provision of law;

(7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B or C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter;

(8) subject to sections 8334(c) and 8339(i) of this title, service performed on or after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide; and

(9) subject to sections 8334(c) and 8339(i) of this title, service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States.

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (3) of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter of the type described in paragraph (8) of this subsection and performed by an employee. For the purpose of paragraph (5) of this subsection—

(A) a volunteer and a volunteer leader are deemed receiving pay during their service at the respective rates of readjustment allowances payable under sections 2504(c) and 2505(1) of title 22; and

(B) the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and the termination of that service by the President or by death or resignation.

Service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32, United States Code, on or after the effective date of the National Guard Technicians Act of 1968.

(c) Except as provided by subsection (d) of this section, an employee or Member shall be allowed credit for periods of military service before the date of the separation on which title to annuity is based. However, if an employee or Member is awarded retired pay on account of military service, his military service may not be credited unless the retired pay is awarded—

(1) on account of a service-connected disability—

(A) incurred in combat with an enemy of the United States; or

(B) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38; or

(2) under chapter 67 of title 10.

(d) For the purpose of section 8339(c)(1) of this title, a Member—

(1) shall be allowed credit only for periods of military service not exceeding 5 years, plus military service performed by the Member on leaving his office, for the purpose of performing military service, during a war or national emergency proclaimed by the President or declared by Congress and before his final separation from service as Member; and

(2) may not receive credit for military service for which credit is allowed for purpose of retired pay under other statute.

(e) This subchapter does not affect the right of an employee or Member to retired pay, pension, or compensation in addition to an annuity payable under this subchapter.

(f) Credit shall be allowed for leaves of absence without pay granted an employee while performing military service or while receiving benefits under subchapter I of chapter 81 of this title. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he was receiving benefits under subchapter I of chapter 81 of this title or any earlier statute on which such subchapter is based. Except for a substitute in the postal field service, credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(g) An employee who during the period of a war, or of a national emergency as proclaimed by the President or declared by Congress, leaves his position to enter the military service is deemed, for the purpose of this subchapter, as not separated from his civilian position because of that military service, unless he applies for and receives a lump-sum credit under this subchapter. However, the employee is deemed as not retaining his civilian position after December 31, 1956, or after the expiration of 5 years of that military service, whichever is later.

(h) An employee who—

(1) has at least 5 years' Member service; and

(2) serves as a Member at any time after August 2, 1946;

may not be allowed credit for service which is used in the computation of an annuity under section 8339(c) of this title.

(i) An individual who qualifies as an employee under section 8331 (1)(E) of this title is entitled to credit for his service as a United States Commissioner, which is not credited for the purpose of this subchapter for service performed by him in a capacity other than Commissioner, on the basis of—

(1)  $\frac{1}{3}13$  of a year for each day on which he performed service as a Commissioner before July 1, 1945; and

(2)  $\frac{1}{2}60$  of a year for each day on which he performed service as a Commissioner after June 30, 1945.

Credit for service performed as Commissioner may not exceed 313 days in a year before July 1, 1945, or 260 days in a year after June 30, 1945. For the purpose of this subchapter, the employment and pay of a Commissioner is deemed on a daily basis when actually employed.

(j) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual after December 1956, the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his widow or child is based, if the individual, widow, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors

benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or as a volunteer or volunteer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or widow becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, widow, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation, and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or by death or resignation.

(k) (1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, which 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the second sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

(2) An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the employee dies, a survivor as defined by section 8331(10) of this title may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the second sentence of subsection (f) of this section.

(l) (1) Any employee or Member who—

(A) is of Japanese ancestry; and

(B) while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was

interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to—

- (i) Executive Order Numbered 9066, dated February 19, 1942;
- (ii) section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);
- (iii) Executive Order Numbered 9489, dated October 18, 1944;
- (iv) sections 4067 through 4070 of the Revised Statutes of the United States; or
- (v) any other statute, rule, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

(2) For the purpose of this subsection, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 567, amended Pub. L. 90-83, § 1(73), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-486, § 5(a), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-177, § 112(a), Dec. 30, 1969, 83 Stat. 831; Pub. L. 91-510, § 442(b), Oct. 26, 1970, 84 Stat. 1191; Pub. L. 91-658, § 1, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-297, § 7(1), May 16, 1972, 86 Stat. 144; Pub. L. 92-454, § 1, Oct. 2, 1972, 86 Stat. 760; Pub. L. 93-113, § 602, Oct. 1, 1973, 87 Stat. 417; Pub. L. 94-183, § 3(32), (33), and (39), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-382, § 1(a), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8333. Eligibility for annuity

(a) An employee must complete at least 5 years of civilian service before he is eligible for an annuity under this subchapter.

(b) An employee or Member must complete, within the last 2 years before any separation from service, except a separation because of death or disability, at least 1 years of creditable civilian service during which he is subject to this subchapter before he or his survivors are eligible for annuity under this subchapter based on the separation. If an employee or Member, except an employee or Member separated from the service because of death or disability, fails to meet the service requirement of the preceding sentence, the amounts deducted from his pay during the service for which no eligibility for annuity is established based on the separation shall be returned to him on the separation. Failure to meet this service requirement does not deprive the individual or his survivors of annuity rights which attached on a previous separation.

(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of this title have been deducted or deposited with respect to his last 5 years of civilian service, or, in the case of a survivor annuity under section 8341 (d) or (e)(1) of this title, with respect to his total service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 569, amended Pub. L. 91-93, § 201(b), Oct. 20,

1969, 83 Stat. 138; Pub. L. 94-183, § 2(34), Dec. 31, 1975, 89 Stat. 1058).

### § 8334. Deductions, contributions, and deposits

(a) (1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee,  $7\frac{1}{2}$  percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

(b) Each employee or Member is deemed to consent and agree to these deductions from basic pay. Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less these deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to the benefits to which the employee or Member is entitled under this subchapter.

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	Service period
Employee-----	$2\frac{1}{2}$	August 1, 1920, to June 30, 1926.
	$3\frac{1}{2}$	July 1, 1926, to June 30, 1942.
	5-----	July 1, 1942, to June 30, 1948.
	6-----	July 1, 1948, to October, 31 1956.
	$6\frac{1}{2}$	November 1, 1956, to December 31, 1969.
	7-----	After December 31, 1969.
Member or employee for Congressional employee service-----	$2\frac{1}{2}$	August 1, 1920, to June 30, 1926.
	$3\frac{1}{2}$	July 1, 1926, to June 30, 1942.
	5-----	July 1, 1942, to June 30, 1948.
	6-----	July 1, 1948, to October 31, 1956.
	$6\frac{1}{2}$	November 1, 1956, to December 31, 1969.
	$7\frac{1}{2}$	After December 31, 1969.
Member for Member service-----	$2\frac{1}{2}$	August 1, 1920, to June 30, 1926.
	$3\frac{1}{2}$	July 1, 1926, to June 30, 1942.
	5-----	July 1, 1942, to August 1, 1946.
	6-----	August 2, 1946, to October 31, 1956.
	$7\frac{1}{2}$	November 1, 1956, to December 31, 1969.
	8-----	After December 31, 1969.

	Percentage of basic pay	Service period
Law enforcement officer for law enforcement service and firefighter for firefighter service	2½----- 3½----- 5----- 6----- 6½----- 7----- 7½-----	August 1, 1920, to June 30, 1926. July 1, 1926, to June 30, 1942. July 1, 1942, to June 30, 1948. July 1, 1948, to October 31, 1956. November 1, 1956, to December 31, 1969. January 1, 1970, to December 31, 1974. After December 31, 1974.
Bankruptcy judge	2½----- 3½----- 5----- 6----- 6½----- 7-----	August 1, 1920, to June 30, 1926. July 3, 1926, to June 30, 1942. July 1, 1942, to June 30, 1948. July 1, 1948, to October 31, 1956. November 1, 1956, to December 31, 1969. After January 1, 1970.

(d) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which he may be allowed credit under this subchapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

(e) Interest under subsection (c) or (d) of this section is computed from the mid-point of each service period included in the computation, or from the date refund was paid, to the date of deposit or commencing date of annuity, whichever is earlier. The interest is computed at the rate of 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually. The deposit may be made in one or more installments. Interest may not be charged for a period of separation from the service which began before October 1, 1956.

(f) Under such regulations as the Office of Personnel Management may prescribe, amounts deducted under subsection (a) of this section and deposited under subsections (c) and (d) of this section shall be entered on individual retirement records.

(g) Deposit may not be required for—

- (1) service before August 1, 1920;
- (2) military service;
- (3) service for the Panama Railroad Company before January 1, 1924;

(4) service performed before January 1, 1950, by natives of the Pribilof Islands in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands;

(5) days of unused sick leave credited under section 8339(m) of this title; or

(6) any period for which credit is allowed under section 8332(l) of this title.

(h) For the purpose of survivor annuity, deposits authorized by subsections (c) and (d) of this section may also be made by the sur-

vivor of an employee or Member. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 570, amended Pub. L. 90-83, § 1(74), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-486, § 5(b), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-93, §§ 102, 202, Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92-297, § 7(2), May 16, 1972, 86 Stat. 144; Pub. L. 93-350, § 3, July 12, 1974, 88 Stat. 355; Pub. L. 94-126, §§ 1(a) and 2(a), Nov. 12, 1975, 89 Stat. 679; Pub. L. 95-382, § 1(b), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2681.)

### § 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary of Transportation, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary of Transportation shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

(b) A law enforcement officer or a firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(c) An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Company or the Canal Zone Government, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(d) The President, by Executive order, may exempt an employee from automatic separation under this section when he determines the public interest so requires.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 571, amended Pub. L. 92-297, § 4, May 16, 1972, 86 Stat. 144; Pub. L. 93-350, § 4, July 12, 1974, 88 Stat. 355; Pub. L. 95-256, § 5(c)(1)-(3), Apr. 6, 1978, 92 Stat. 191.)

**§ 8336. Immediate retirement**

- (a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.
- (b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of services is entitled to an annuity.
- (c) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years, is entitled to an annuity.
- (d) An employee who is separated from the service—  
(1) involuntarily, except by removal for cause on charges of misconduct or delinquency; or  
(2) voluntarily, during a period when the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function, as determined by the Office of Personnel Management, and the employee is serving in a geographic area designated by the Office; after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.
- (e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.
- (f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.
- (g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.
- (h) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.
- (i) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 571, amended Pub. L. 90-83, § 1(75), Sept. 11, 1967, 81 Stat. 214; Pub. L. 92-297, § 5, May 16, 1972, 86 Stat. 144; Pub. L. 92-382, § 1, Aug. 14, 1972, 86 Stat. 539; Pub. L. 93-39, June 12, 1973, 87 Stat. 73; Pub. L. 93-350, § 5, July 12, 1974, 88 Stat. 356; Pub. L. 94-183, § 2 (40) and (41), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1147, 1175.)

**§ 8337. Disability retirement**

(a) An employee who completes 5 years of civilian service and is found by the Office of Personnel Management to have become disabled shall be retired on his own application or on application by his agency. A Member who completes 5 years of Member service and is found by the Office to have become disabled shall be retired on his own application. An annuity authorized by this section is computed under section 8339 of this title.

(b) A claim may be allowed under this section only if the application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who at the date of separation from service or within 1 year thereafter is mentally incompetent, if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

(c) An annuitant receiving disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until he becomes 60 years of age; unless his disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(d) If an annuitant receiving disability retirement annuity from the Fund, before becoming 60 years of age, recovers from his disability, payment of the annuity terminates on reemployment by the Government or 1 year after the date of the medical examination showing the recovery, whichever is earlier. If an annuitant receiving disability retirement annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates on reemployment by the Government or 1 year after the end of the calendar year in which earning capacity is so restored, whichever is earlier. Earning capacity is deemed restored if in each of 2 succeeding calendar years the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

(e) If an annuitant whose annuity is terminated under subsection (d) of this section is not reemployed in a position in which he is subject to this subchapter, he is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of this subchapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of this subchapter. If an annuitant whose annuity is heretofore or hereafter terminated because of an earning capacity provision of this subchapter or an earlier statute—

(1) is not reemployed in a position within the purview of this subchapter; and

(2) has not recovered from the disability for which he was retired;

his annuity shall be restored at the same rate effective the first of the year following any calendar year in which his income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement. If an annuitant whose annuity is heretofore or hereafter terminated because of a medical finding that he has recovered from disability is not re-employed in a position in which he is subject to this subchapter, his annuity shall be restored at the same rate effective from the date of medical examination showing a recurrence of the disability. The second and third sentences of this subsection do not apply to an individual who has become 62 years of age and is receiving or is eligible to receive annuity under the first sentence of this subsection.

(f) An individual is not entitled to receive an annuity under this subchapter and compensation for injury or disability to himself under subchapter I of chapter 81 of this title covering the same period of time. This provision does not bar the right of a claimant to the greater benefit conferred by either subchapter for any part of the same period of time. Neither this provision nor any provision of subchapter I of chapter 81 of this title denies to an individual an annuity accruing to him under this subchapter on account of service performed by him, or denies any concurrent benefit to him under subchapter I of chapter 81 of this title on account of the death of another individual.

(g) The right of an individual entitled to an annuity under this subchapter is not affected because he has received a lump-sum payment for compensation under section 8135 of this title. However, if the annuity is payable on account of the same disability for which compensation under section 8135 of this title has been paid, so much of the compensation as has been paid for a period extended beyond the date the annuity becomes effective, as determined by the Department of Labor, shall be refunded to that Department to be covered into the Employees' Compensation Fund. Before the individual may receive the annuity he shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of that amount from the annuity payable to him under this subchapter, which amount shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund.

Deductions from the annuity may be made from accrued and accruing payments. When the Department of Labor finds that the financial circumstances of the annuitant warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as that Department determines. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 572, amended Pub. L. 90-83, § 1(76), Sept. 11, 1967, 81 Stat. 214; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8338. Deferred retirement

(a) An employee who is separated from the service or transferred to a position in which he does not continue subject to this subchapter after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(c) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574, amended Pub. L. 90-83, § 1(77), Sept. 11, 1967, 81 Stat. 214.)

### § 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1)  $1\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2)  $1\frac{3}{4}$  percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus \$25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had—

(1) at least 5 years' service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed, with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years' service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to—

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service;

by multiplying  $2\frac{1}{2}$  percent of his average pay by the years of that service.

(d) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is—

(A)  $2\frac{1}{2}$  percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years.

(e) The annuity of an employee retiring under section 8336(e) of this title is computed under subsection (a) of this section. That annuity may not be less than 50 percent of the average pay of the employee.

(f) The annuity computed under subsections (a)-(e) and (o) of this section may not exceed 80 percent of—

- (1) the average pay of the employee; or
- (2) the greatest of—

(A) the final basic pay of the Member;

(B) the average pay of the Member; or

(C) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(d)(1) of this title.

(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

- (1) 40 percent of his average pay; or
- (2) the sum obtained under subsections (a)-(c) of this section after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

(h) The annuity computed under subsections (a), (b), and (f) of this section for an employee retiring under section 8336(d) or (h) of this title is reduced by  $\frac{1}{6}$  of 1 percent for each full month the employee is under 55 years of age at the date of separation. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by  $\frac{1}{12}$  of 1 percent for each full month not in excess of 60 months, and  $\frac{1}{6}$  of 1 percent for each full month in excess of 60 months, the Member is under 60 years of age at the date of separation.

(i) The annuity computed under subsections (a)-(h) and (o) of this section is reduced by 10 percent of a deposit described by section 8334(c) of this title remaining unpaid, unless the employee or Member elects to eliminate the service involved for the purpose of annuity computation.

(j) The annuity computer under subsections (a)-(i) and (o) of this section for a married employee or Member retiring under this subchapter, or any portion of that annuity designated in writing for the purpose of section 8341(b) of this title by the employee or Member at the time of retirement, is reduced by  $2\frac{1}{2}$  percent of so much thereof as does not exceed \$3,600 and by 10 percent of so much thereof as exceeds \$3,600, unless the employee or Member notifies the Office of Personnel Management in writing at the time of retirement that he does not desire any spouse surviving him to receive an annuity under section 8341(b) of this title. An annuity which is reduced under this subsection or any similar prior provision of law shall, for each full month during which a retired employee or Member is not married (or is remarried if there is no election in effectuation under the following sentence), be recomputed and paid as if the annuity had not been so reduced. Upon remarriage the retired employee or Member may irrevocably elect during such marriage, in a signed writing received in

the Office within 1 year after such remarriage, a reduction in his annuity for the purpose of allowing an annuity for his spouse in the event such spouse survives him. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage, and shall be effective the first day of the first month beginning 1 year after the date of remarriage.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an unmarried employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)-(i) and (o) of this section and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced.

(2) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 1 year after he marries, a reduction in his current annuity as provided in subsection (i) of this section. The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage. The election voids prospectively any election previously made under paragraph (1) of this subsection.

(l) The annuity computed under subsections (a)-(k) and (o) of this section for an employee who is a citizen of the United States is increased by \$36 for each year of service in the employ of—

(1) the Alaska Engineering Commission, or The Alaska Railroad in Alaska between March 12, 1914, and July 1, 1923; or

(2) The Isthmian Canal Commission, or the Panama Railroad Company on the Isthmus of Panama between May 4, 1904, and April 1, 1914.

(m) In computing any annuity under subsections (a)-(e) and (o) of this section, the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by subsection (f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2) (x)-(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(o) The annuity of an employee who is a bankrupt judge is computed with respect to service after March 31, 1979 and before April 1, 1984, as a bankrupt judge and his military service (not exceeding

five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.<sup>1</sup> (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 574, amended Pub. L. 90-83, § 1(78), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90-206, title II, § 224(b), Dec. 16, 1967, 81 Stat. 642; Pub. L. 90-486, § 5(c), Aug. 13, 1968, 82 Stat. 642; Pub. L. 91-93, § 203, Oct. 20, 1969, 83 Stat. 139; Pub. L. 91-658, § 2, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92-297, §§ 6, 7(3), May 16, 1972, 86 Stat. 144; Pub. L. 93-260, § 2(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 93-350, § 6, July 12, 1974, 88 Stat. 356; Pub. L. 93-474, § 1, Oct. 26, 1974, 88 Stat. 1438; Pub. L. 94-126, § 1(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-397, § 1(d), Sept. 3, 1976, 90 Stat. 1203; Pub. L. 95-256, § 5(d), Apr. 6, 1978, 92 Stat. 191; Pub. L. 95-317, § 1(a), 2, July 10, 1978, 92 Stat. 382; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1175 and 1224; Pub. L. 95-519, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2681.)

### § 8340. Cost-of-living adjustment of annuities

(a) Effective December 1, 1965, each annuity payable from the Fund having a commencing date before December 2, 1965, is increased by—

(1) the percent rise in the price index, adjusted to the nearest  $\frac{1}{10}$  of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus

(2) 6½ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred before October 2, 1956, or 1½ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after October 1, 1956.

Each annuity payable from the Fund (other than the immediate annuity of an annuitant's survivor or of a child entitled under section 8341(e) of this title) having a commencing date after December 1, 1965, but before January 1, 1966, is increased from its commencing date as if the annuity commencing date were December 1, 1965. Each survivor annuity authorized by—

(A) section 8 of the Act of May 29, 1930, as amended to July 6, 1950; or

(B) section 2 of the Act of June 25, 1958 (72 Stat. 219); is increased by any additional amount required to make the total increase under this subsection equal to the smaller of 15 percent or \$10 a month.

(b) (1) The Office shall—

(A) on January 1 of each year, or within a reasonable time thereafter, determine the percent change in the price index published for December of the preceding year over the price index published for June of the preceding year, and

(B) on July 1 of each year, or within a reasonable time thereafter, determine the percent change in the price index published for June of such year over the price index published for December of the preceding year.

<sup>1</sup> This subsection "(a)" probably should have been subsection "(n)".

(2) If in any year the percent change determined under either paragraph (1)(A) or (1)(B) indicates a rise in the price index, then—

(A) effective March 2 of such year, in the case of an increase under paragraph (1)(A), each annuity payable from the Fund having a commencing date not later than such March 1 shall be increased by the percent change computed under such paragraph, adjusted to the nearest  $\frac{1}{10}$  of 1 percent, or

(B) effective September 1 of such year, in the case of an increase under paragraph (1)(B), each annuity payable from the Fund having a commencing date not later than such September 1 shall be increased by the percent change computed under such paragraph, adjusted to the nearest  $\frac{1}{10}$  of 1 percent.

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) An annuity (except a deferred annuity under section 8338 of this title or any other provision of law) which—

(A) is payable from the Fund to an employee or Member who retires, or to the widow or widower of a deceased employee or Member; and

(B) has a commencing date after the effective date of the then last preceding annuity increase under subsection (b) of this section;

shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under subsection (b) of this section. In the administration of this paragraph, an employee or a deceased employee shall be deemed, for the purposes of section 8339(m) of this title, to have to his credit, on the effective date of the then last preceding annuity increase under subsection (b) of this section, a number of days of unused sick leave equal to the number of days of unused sick leave to his credit on the date of his separation from the service.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (except a child entitled under section 8341(e) of this title), which annuity commences the day after the death of the annuitant and after the effective date of the first increase under this section, shall be increased by the total percent increase the annuitant was receiving under this section at death. However, the increase in a survivor annuity authorized by section 8 of the Act of May 29, 1930, as amended to July 6, 1950, shall be computed as if the annuity commencing date had been the effective date of the first increase under this section.

(3) For the purpose of computing the annuity of a child under section 8341(e) of this title that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in section 8341(e) of this title shall be increased by the total percent increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 percent and 75 percent appearing in section 8341(e) of this title shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(d) This section does not authorize an increase in an additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar. However, the monthly installment shall after adjustment reflect an increase of at least \$1.

(f) Effective September 1, 1966, or on the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the Fund resulted from the death of—

(1) an employee or Member before October 11, 1962; or

(2) a retired employee or Member whose retirement was based on a separation from service before October 11, 1962;

is increased by 10 percent. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 576, amended Pub. L. 90-83, § 1(79), Sept. 11, 1967, 81 Stat. 215; Pub. L. 91-93, § 204, Oct. 20, 1969, 83 Stat. 139; Pub. L. 93-136, Oct. 24, 1973, 87 Stat. 490; Pub. L. 94-126, § 2(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-183, § 2(35), Dec. 31, 1975, 89 Stat. 1958; Pub. L. 94-440, Oct. 1, 1976, 90 Stat. 1462; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8341. Survivor annuities

(a) For the purpose of this section—

(1) "widow" means the surviving wife of an employee or Member who—

(A) was married to him for at least 1 year immediately before his death; or

(B) is the mother of issue by that marriage;

(2) "widower" means the surviving husband of an employee or Member who—

(A) was married to her for at least 1 year immediately before her death; or

(B) is the father of issue by that marriage; and

(3) "child" means—

(A) an unmarried child under 18 years of age, including

(i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the employee or Member in a regular parent-child relationship, and (iii) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Per-

sonnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b) (1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962, of an annuity computed under section 8339(a)-(i) and (o) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the spouse, widow, or widower under this subsection commences on the day after the annuitant dies. This annuity and the rights thereto terminate on the last day of the month before the spouse, widow, or widower—

(A) dies; or

(B) remarries before becoming 60 years of age.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)-(f), (i), and (o) of this title as may apply with respect to the employee or Member, except that, in computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 60 years of age.

(e) (1) If any employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse, each surviving child is entitled to an annuity equal to the smallest of—

(A) 60 percent of the average pay of the employee or Member divided by the number of children;

(B) \$900; or

(C) \$2,700 divided by the number of children;

subject to section 8340 of this title. If the employee or Member is not survived by a spouse, each surviving child is entitled to an annuity equal to the smallest of—

(i) 75 percent of the average pay of the employee or Member divided by the number of children;

(ii) \$1,080; or

(iii) \$3,240 divided by the number of children;

subject to section 8340 of this title.

(2) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse or child had not survived the employee or Member.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-

sum credit and files application therefor with the Office before the award of the annuity.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 60 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 577, amended Pub. L. 90-83, § 1(80), Sept. 11, 1967, 81 Stat. 216; Pub. L. 91-93, § 206, Oct. 20, 1969, 83 Stat. 140; Pub. L. 91-658, § 3, Jan. 8, 1971, 84 Stat. 1961, 1962; Pub. L. 92-243, § 1, Mar. 9, 1972, 86 Stat. 56; Pub. L. 92-297, § 7(4), May 16, 1972, 86 Stat. 145; Pub. L. 93-260, § 1(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 94-183, § 2(36), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-317, § 1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95-318, § 2, July 10, 1978, 92 Stat. 384; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2681.)

#### **§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence**

(a) An employee or Member who is separated from the service, or is transferred to a position in which he does not continue subject to this subchapter, is entitled to be paid the lump-sum credit if his separation or transfer occurs and application for payment is filed with the Office of Personnel Management at least 31 days before the earliest commencing date of any annuity for which he is eligible. The receipt of payment of the lump-sum credit by the individual voids all annuity rights under this subchapter, until he is reemployed in the service subject to this subchapter. This subsection also applies to an employee or Member separated before October 1, 1956, after completing at least 20 years of civilian service.

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)-(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

(d) If an employee or Member dies—

(1) without a survivor; or

(2) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed;

or if a former employee or Member not retired dies, the lump-sum shall be paid.

(e) If all annuity rights under this subchapter based on the service of a deceased employee or Member terminates before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(f) If an annuitant dies, annuity accrued and unpaid shall be paid.

(g) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor annuitant shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor annuitant.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor annuitant, to such next of kin of the survivor annuitant as the Office determines to be entitled under the laws of the domicile of the survivor annuitant at the date of his death.

(h) Amounts deducted and withheld from the basic pay of an employee or Member from the first day of the first month which begins after he has performed sufficient service (excluding service which the employee or Member elects to eliminate for the purpose of annuity computation under section 8339 of this title) to entitle him to the maximum annuity provided by section 8339 of this title, together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deductions to the date of retirement or death, shall be applied toward any deposit due under section 8334 of this title, and any balance not so required is deemed a voluntary contribution for the purpose of section 8343 of this title.

(i) An employee who—

(1) is separated from the service before July 12, 1960; and

(2) continues in the service after July 12, 1960, without break in service of 1 workday or more;

is entitled to the benefits of subsection (h) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 579, amended Pub. L. 90-83, § 1(81), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8343. Additional annuities; voluntary contributions

(a) Under regulations prescribed by the Office of Personnel Management, an employee or Member may voluntarily contribute addi-

tional sums in multiples of \$25, but the total may not exceed 10 percent of his basic pay for creditable service after July 31, 1920. The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest at 3 percent a year compounded annually to—

(1) the date of payment under subsection (d) of this section, separation, or transfer to a position in which he does not continue subject to this subchapter, whichever is earliest; or

(2) the commencing date fixed for a deferred annuity or date of death, whichever is earlier, in the case of an individual who is separated with title to deferred annuity and does not claim the voluntary contribution account.

(b) The voluntary contribution account is used to purchase at retirement an annuity in addition to the annuity otherwise provided. For each \$100 in the voluntary contribution account, the additional annuity consists of \$7, increased by 20 cents for each full year, if any, the employee or Member is over 55 years of age at the date of retirement.

(c) A retiring employee or Member may elect a reduced additional annuity instead of the additional annuity described by subsection (b) of this section and designate in writing an individual to receive after his death an annuity of 50 percent of his reduced additional annuity. The additional annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual designated is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent.

(d) A present or former employee or Member is entitled to be paid the voluntary contribution account if he files application for payment with the Office before receiving an additional annuity. An individual who has been paid the voluntary contribution account may not again deposit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

(e) If a present or former employee or Member not retired dies, the voluntary contribution account is paid under section 8342(c) of this title. If all additional annuities or any right thereto based on the voluntary contribution account of a deceased employee or Member terminate before the total additional annuity paid equals the account, the difference is paid under section 8342(c) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 580, amended Pub. L. 90-83, § 1 (82), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 8344. Annuities and pay on reemployment**

(a) If an annuitant receiving annuity from the Fund, except—

(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

(2) an annuitant whose annuity, based on an involuntary separation (other than an automatic separation or an involuntary separation for cause on charges of misconduct or delinquency), is terminated under subsection (b) of this section;

(3) an annuitant whose annuity is terminated under subsection (c) of this section; or

(4) a Member receiving annuity from the Fund;

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter.

Deductions for the Fund may not be withheld from his pay. An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1) (i) or (ii) of this title—

- (A) his annuity on termination of employment is increased by an annuity computed under section 8339 (a), (b), (d), (e), (h), (i), and (o) of this title as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

- (B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is increased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had otherwise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

(b) If an annuitant, other than a Member receiving an annuity from the Fund, whose annuity is based on an involuntary separation (other than an automatic separation or an involuntary separation for cause or charges on misconduct or delinquency) is reemployed in a position in which he is subject to this subchapter, payment of the annuity terminates on reemployment.

(c) If an annuitant, other than a Member receiving an annuity from the Fund, is appointed by the President to a position in which he is subject to this subchapter, payment of the annuity terminates on reemployment.

(d) If a Member receiving annuity from the Fund becomes employed in an appointive or elective position, annuity payments are discontinued during the employment and resumed in the same amount on termination of the employment, except that—

(1) the retired Member or Member separated with title to immediate or deferred annuity, who serves at any time after separation as a Member in an appointive position in which he is subject to this subchapter, is entitled, if he so elects, to have his Member annuity computed or recomputed as if the service had been performed before his separation as a Member and the annuity as so computed or recomputed is effective—

(A) the day Member annuity commences; or

(B) the day after the date of separation from the appointive position;

whichever is later;

(2) if the retired Member becomes employed after December 31, 1958, in an appointive position on an intermittent-service basis—

(A) his annuity continues during the employment and is not increased as a result of service performed during that employment;

(B) retirement deductions may not be withheld from his pay;

(C) an amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title; and

(D) the amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund;

(3) if the retired Member becomes employed after December 31, 1958, in an appointive position without pay on a full-time or substantially full-time basis, his annuity continues during the employment and is not increased as a result of service performed during the employment; and

(4) if the retired Member takes office as Member and gives notice as provided by section 8331(2) of this title, his service as Member during that period shall be credited in determining his right to and the amount of later annuity.

(e) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 581, amended Pub. L. 90-83, § 1(83), Sept. 11, 1967, 81 Stat. 217; Pub. L. 91-375, § 6(c) (20), Aug. 12, 1970, 84 Stat. 776, Pub. L. 91-658, § 4, Jan. 8, 1971, 84 Stat. 1962; Pub. L. 92-297, § 7(5), May 16, 1972, 86 Stat. 145; Pub. L. 94-397, § 1, Sept. 3, 1976, 90 Stat. 1202; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226; Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2681.)

#### § 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, constitutes the monthly rate payable

on the first business day of the month after the month or other period for which it has accrued.

(b) Except as otherwise provided, the annuity of an employee or Member commences on the day after he is separated from the service, or on the day after his pay ceases and he meets the service and the age or disability requirement for title to annuity. An annuity payable from the Fund allowed after September 5, 1960, commences on the day after the occurrence of the event on which payment thereof is based.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating even provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(f) (1) Notwithstanding any other provision of this subchapter other than this subsection, the monthly rate of annuity payable under subsection (a) of this section shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

(2) Notwithstanding any other provision of this subchapter, other than this subsection, the monthly rate of annuity payable under subsection (a) of this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act, or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act, a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof, is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i) (1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j) (1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(3) As used in this subsection, "court" means any court of any State or the District of Columbia. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 582, amended Pub. L. 93-273, § 1, Apr. 26, 1974, 88 Stat. 93; Pub. L. 94-126, § 1(c), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94-166, § 1, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 95-366, Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 8346. Exemption from legal process; recovery of payments**

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsections (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Office of Personnel Management, the individual is without fault and recovery would be

against equity and good conscience. Withholding or recovery of money mentioned by this subchapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 95-366, Sept. 15, 1978, 92 Stat. 600; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. The decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d) An administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(e) The Office shall fix the fees for examinations made under this subchapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering this subchapter.

(f) The Office shall select three actuaries, to be known as the Board of Actuaries of the Civil Service Retirement System. The Office shall fix the pay of the members of the Board, except members otherwise in the employ of the United States. The Board shall report annually on the actuarial status of the System and furnish its advice and opinion on matters referred to it by the Office. The Board may recommend to the Office and to Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the System on a sound financial basis. The Office shall keep, or cause to be kept, such records as it considers necessary for making periodic actuarial valuations of the System. The Board shall make actuarial valuations every 5 years, or oftener if considered necessary by the Office.

(g) The Office may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency

whose employment is temporary or intermittent. However, the Office may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(h) The Office, on recommendation by the Commissioner of the District of Columbia, may exclude from the operation of this subchapter an individual or group of individuals employed by the government of the District of Columbia whose employment is temporary or intermittent.

(i) The Architect of the Capitol may exclude from the operation of this subchapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(j) The Librarian of Congress may exclude from the operation of this subchapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(k) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this subchapter to an individual named by section 8331(1)(F) of this title.

(l) The Director or Acting Director of the Botanic Garden may exclude from the operation of this subchapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 583, amended Pub. L. 90-83, § 1(84), Sept. 11, 1967, 81 Stat. 218; Pub. L. 90-623, § 1(22), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 94-166, § 2, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224 and 1227.)

#### § 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 of this title; and

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter and other retirement and annuity statutes.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil service employees generally.

(c) The Secretary shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are extended to authorize the issuance at par of public-debt obligations for

purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of  $\frac{1}{8}$  of 1 percent, the rate of interest on the obligations shall be the multiple of  $\frac{1}{8}$  of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

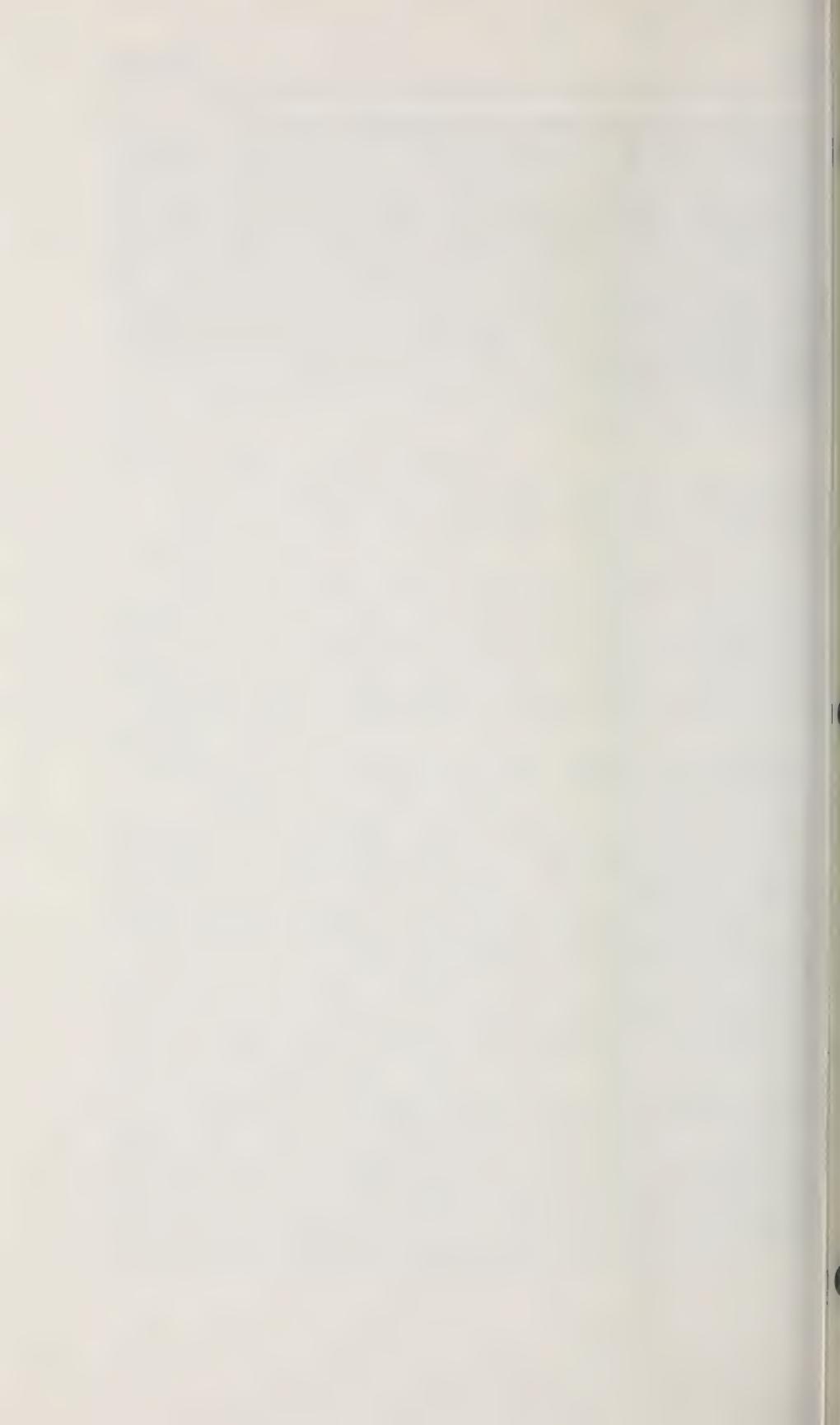
(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter. The Office shall report to the President and to the Congress the sums credited to the Fund under this subsection.

(h) (1) Notwithstanding any other statute, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to active and retired Postal Service officers and employees, and to their survivors, when the increase results from an employee-management agreement under title 39, or any administrative action by the Postal Service taken pursuant to law, which authorizes increases in pay on which benefits are computed.

(2) The estimated increase in the unfunded liability, referred to in paragraph (1) of this subsection, shall be determined by the Office of Personnel Management. The United States Postal Service shall pay the amount so determined to the Office in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in pay becomes effective. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 584, amended Pub. L. 90-83, § 1(85), Sept. 11, 1967, 81 Stat. 218; Pub. L. 91-93, § 103, Oct. 20, 1969, 83 Stat. 137; Pub. L. 93-349, § 1, July 12, 1974, 88 Stat. 354; Pub. L. 94-183, § 2(37), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)



## **CHAPTER 85—UNEMPLOYMENT COMPENSATION**

### **SUBCHAPTER I—EMPLOYEES GENERALLY**

SEC.

- 8501. Definitions.
- 8502. Compensation under State agreement.
- 8503. Compensation absent State agreement.
- 8504. Assignment of Federal service and wages.
- 8505. Payments to States.
- 8506. Dissemination of information.
- 8507. False statements and misrepresentations.
- 8508. Regulations.

### **SUBCHAPTER II—EX-SERVICEMEN**

- 8521. Definitions; application.
- 8522. Assignment of Federal service and wages.
- 8523. Dissemination of information.
- 8524. [Repealed.]
- 8525. Effect on other statutes.

(491)

## SUBCHAPTER I—EMPLOYEES GENERALLY

### § 8501. Definitions

For the purpose of this subchapter—

- (1) “Federal service” means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—
    - (A) by an elective official in the executive or legislative branch;
    - (B) as a member of the armed forces;
    - (C) by Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22;
    - (D) outside the United States, the Commonwealth of Puerto Rico, and the Virgin Islands by an individual who is not a citizen of the United States;
    - (E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;
    - (F) by an individual receiving nominal pay and allowances of \$12 or less a year;
    - (G) in a hospital, home, or other institution of the United States by a patient or inmate thereof;
    - (H) by a student-employee as defined by section 5351 of this title;
    - (I) by an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;
    - (J) by an individual employed under a Federal relief program to relieve him from unemployment;
    - (K) as a member of a State, county, or community committee under the Agricultural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless the board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or
    - (L) by an officer or a member of the crew on or in connection with an American vessel—
      - (i) owned by or bareboat chartered to the United States; and
      - (ii) whose business is conducted by a general agent of the Secretary of Commerce;
- if contributions on account of the service are required to be made to an unemployment fund under a State unemployment compensation law under section 3305(g) of title 26;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service;

(3) "Federal employee" means an individual who has performed Federal service;

(4) "compensation" means cash benefits payable to an individual with respect to his unemployment including any portion thereof payable with respect to dependents;

(5) "benefit year" means the benefit year as defined by the applicable State unemployment compensation law, and if not so defined the term means the period prescribed in the agreement under this subchapter with a State or, in the absence of such an agreement, the period prescribed by the Secretary of Labor;

(6) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(7) "United States," when used in a geographical sense, means the States; and

(8) "base period" means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 585; amended Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2672, 2678; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8502. Compensation under State agreement

(a) The Secretary of Labor, on behalf of the United States, may enter into an agreement with a State, or with an agency administering the unemployment compensation law of a State, under which the State agency shall—

(1) pay, as agent of the United States, compensation under this subchapter to Federal employees; and

(2) otherwise cooperate with the Secretary and with other State agencies in paying compensation under this subchapter.

(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

(c) Repealed. Pub. L. 90-83, § 1(86)(B), Sept. 11, 1967, 81 Stat. 218.

(d) A determination by a State agency with respect to entitlement to compensation under an agreement is subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(e) Each agreement shall provide the terms and conditions on which it may be amended or terminated. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 586, amended Pub. L. 90-83, § 1(86), Sept. 11, 1967, 81 Stat. 218.)

### § 8503. Compensation absent State agreement

(a) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 8504 of this title to a State

which does not have an agreement with the Secretary of Labor, the Secretary, under regulations prescribed by him, shall, on the filing by the Federal employee of a claim for compensation under this subsection, pay compensation to him in the same amount, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of the State if his Federal service and Federal wages had been included as employment and wages under that State law. However, if the Federal employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of compensation under this subsection may be made only on the basis of his Federal service and Federal wages.

(b) A Federal employee whose claim for compensation under subsection (a) of this section is denied is entitled to a fair hearing under regulations prescribed by the Secretary. A final determination by the Secretary with respect to entitlement to compensation under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 587, amended Pub. L. 90-83, § 1(87), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2673.)

#### **§ 8504. Assignment of Federal service and wages**

Under regulations prescribed by the Secretary of Labor, the Federal service and Federal wages of a Federal employee shall be assigned to the State in which he had his last official station in Federal service before the filing of his first claim for compensation for the benefit year. However—

(1) if, at the time of filing his first claim, he resides in another State in which he performed, after the termination of his Federal service, service covered under the unemployment compensation law of the other State, his Federal service and Federal wages shall be assigned to the other State; and

(2) if his last official station in Federal service, before filing his first claim, was outside the United States, his Federal service and Federal wages shall be assigned to the State where he resides at the time he files his first claim.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 588, amended Pub. L. 90-83, § 1(88), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2673.)

#### **§ 8505. Payments to States**

(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages.

(b) Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, the sum that the Secretary estimates the State is entitled to receive under this subchapter for each calendar month. The sum shall be reduced or

increased by the amount which the Secretary finds that his estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Secretary and the State agency.

(c) The Secretary, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of this subchapter.

(d) Money paid a State under this subchapter may be used solely for the purposes for which it is paid. Money so paid which is not used for these purposes shall be returned, at the time specified by the agreement, to the Treasury of the United States and credited to current applicable appropriations, funds, or accounts from which payments to States under this subchapter may be made.

(e) An agreement may—

(1) require each State officer or employee who certifies payments or disburses funds under the agreement, or who otherwise participates in its performance, to give a surety bond to the United States in the amount the Secretary considers necessary; and

(2) provide for payment of the cost of the bond from funds for carrying out the purposes of this subchapter.

(f) In the absence of gross negligence or intent to defraud the United States, an individual designated by the Secretary, or designated under an agreement, as a certifying official is not liable for the payment of compensation certified by him under this subchapter.

(g) In the absence of gross negligence or intent to defraud the United States, a disbursing official is not liable for a payment by him under this subchapter if it was based on a voucher signed by a certifying official designated as provided by subsection (f) of this section.

(h) For the purpose of payments made to a State under subchapter III of chapter 7 of title 42, administration by a State agency under an agreement is deemed a part of the administration of the State unemployment compensation law. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 588; amended Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2678.)

#### **§ 8506. Dissemination of information**

(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this subchapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter. The information shall include the findings of the employing agency concerning—

- (1) whether or not the Federal employee has performed Federal service;
- (2) the periods of Federal service;
- (3) the amount of Federal wages; and
- (4) the reasons for termination of Federal service.

The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for correction by the employing agency of errors and omissions. This subsection does not apply with respect to Federal service and Federal wages covered by subchapter II of this chapter.

(b) The agency administering the unemployment compensation law of a State shall furnish the Secretary such information as he considers necessary or appropriate in carrying out this subchapter. The information is deemed the report required by the Secretary for the purpose of section 503(a)(6) of title 42. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 589; amended Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2680.)

### § 8507. False statements and misrepresentations

(a) If a State agency, the Secretary of Labor, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or used to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as compensation under this subchapter to which he was not entitled; the individual shall repay the amount to the State agency or the Secretary. Instead of requiring repayment under this subsection, the State agency or the Secretary may recover the amount by deductions from compensation payable to the individual under this subchapter during a 2-year period after the date of the finding. A finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 8502(a) and 8503(c) of this title.

(b) An amount repaid under subsection (a) of this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Secretary.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 590.)

### § 8508. Regulations

The Secretary of Labor may prescribe rules and regulations necessary to carry out this subchapter and subchapter II of this chapter. The Secretary, insofar as practicable, shall consult with representatives of the State unemployment compensation agencies before prescribing rules or regulations which may affect the performance by the State agencies of functions under agreements under this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 590.)

## SUBCHAPTER II—EX-SERVICEMEN

### § 8521. Definitions; application

(a) For the purpose of this subchapter—

(1) “Federal service” means active service, including active duty for training purposes, in the armed forces which either began after January 31, 1955, or terminated after October 27, 1958, if—

(A) that service was continuous for 90 days or more, or was terminated earlier because of an actual service-incurred injury or disability; and

(B) with respect to that service, the individual—

(i) was discharged or released under conditions other than dishonorable; and

(ii) was not given a bad conduct discharge, or, if an officer, did not resign for the good of the service;

(2) “Federal wages” means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) “State” means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 590, amended Pub. L. 90-83, § 1(89), Sept. 11, 1967, 81 Stat. 218; amended Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2673.)

### § 8522. Assignment of Federal service and wages

Notwithstanding section 8504 of this title, Federal service and Federal wages not previously assigned shall be assigned to the State in which the claimant first files claim for unemployment compensation after his latest discharge or release from Federal service. This assignment is deemed as assignment under section 8504 of this title for the purpose of this subchapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 591; amended Pub. L. 94-566, Oct. 20, 1976, 90 Stat. 2673.)

**§ 8523. Dissemination of information**

(a) When designated by the Secretary of Labor, an agency of the United States shall make available to the appropriate State agency or to the Secretary, as the case may be, such information, including findings in the form and manner prescribed by regulations of the Secretary, as the Secretary considers practicable and necessary for the determination of the entitlement of an individual to compensation under this subchapter.

(b) Subject to correction of errors and omissions as prescribed by regulations of the Secretary, the following are final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title:

(1) Findings by an agency of the United States made in accordance with subsection (a) of this section with respect to—

(A) whether or not an individual has met any condition specified by section 8521(a)(1) of this title;

(B) the periods of Federal service; and

(C) the pay grade of the individual at the time of his latest discharge or release from Federal service.

(2) The schedules of pay and allowances prescribed by the Secretary under section 8521(a)(2) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat 591.)

**§ 8524. Repealed. Pub. L. 91-373, § 107, Aug. 10, 1970, 84 Stat. 701****§ 8525. Effect on other statutes**

(a) Repealed. Pub. L. 90-83, § 1(90), Sept. 11, 1967, 81 Stat. 219.

(b) An individual is not entitled to compensation under this subchapter for any period with respect to which he receives—

(1) a subsistence allowance under chapter 31 of title 38 or under part VIII of Veterans Regulation Numbered 1(a); or

(2) an educational assistance allowance under chapter 35 of title 38.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 591, amended Pub. L. 90-83, § 1(90), Sept. 11, 1967, 81 Stat. 219.)

## CHAPTER 87—LIFE INSURANCE

### SEC.

- 8701. Definition.
- 8702. Automatic coverage.
- 8703. Benefit certificate.
- 8704. Group insurance; amounts.
- 8705. Death claims; order of precedence; escheat.
- 8706. Termination of insurance.
- 8707. Employee deductions; withholding.
- 8708. Government contributions.
- 8709. Insurance policies.
- 8710. Reinsurance.
- 8711. Basic tables of premium rates.
- 8712. Annual accounting; special contingency reserve.
- 8713. Advisory committee.
- 8714. Employees' Life Insurance Fund.
- 8714a. Optional insurance.
- 8715. Jurisdiction of courts.
- 8716. Regulations.

### § 8701. Definition

- (a) For the purpose of this chapter, "employee" means—
  - (1) an employee as defined by section 2105 of this title;
  - (2) a Member of Congress as defined by section 2106 of this title;
  - (3) a Congressional employee as defined by section 2107 of this title;
  - (4) the President;
  - (5) an individual employed by the government of the District of Columbia;
  - (6) an individual employed by Gallaudet College;
  - (7) a United States Commissioner to whom subchapter III of chapter 83 of this title applies by operation of section 8331(1)(E) of this title;
  - (8) an individual employed by a county committee established under section 590h(b) of title 16; and
  - (9) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);
- but does not include—
  - (A) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;
  - (B) an employee who is not a citizen or national of the United States and whose permanent duty station is outside the United States and the Panama Canal Zone; or

(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

(b) Notwithstanding subsection (a) of this section, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this chapter. For the purpose of this subsection, "teacher" and "teaching position" have the meanings given them by section 901 of title 20. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 592, amended Pub. L. 91-418, § 3(a), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-160, Nov. 27, 1973, 87 Stat. 635; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8702. Automatic coverage

(a) An employee is automatically insured on the date he becomes eligible for insurance and each policy of insurance purchased by the Office of Personnel Management under this chapter shall provide for that automatic coverage.

(b) An employee desiring not to be insured shall give written notice to his employing office on a form prescribed by the Office. If the notice is received before he has become insured, he shall not be insured. If the notice is received after he has become insured, his insurance stops at the end of the pay period in which the notice is received. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 593; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8703. Benefit certificate

The Office of Personnel Management shall arrange to have each insured employee receive a certificate setting forth the benefits to which he is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting him. The certificate is issued instead of the certificate which the insurance company would otherwise be required to issue. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 593; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8704. Group insurance; amounts

(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance, plus an equal amount of group accidental death and dismemberment insurance, in accordance with the following schedule, which schedule shall be automatically extended correspondingly by the amounts of increases in the annual rate of basic pay for positions at level II of the Executive Schedule under section 5313 of this title:

If annual pay is—	The amount of group life insurance is—	The amount of group accidental death and dismemberment insurance is—
Greater than—	But not greater than—	
0	\$8,000	\$10,000
\$8,000	9,000	11,000
9,000	10,000	12,000
10,000	11,000	13,000
11,000	12,000	14,000
12,000	13,000	15,000
13,000	14,000	16,000
14,000	15,000	17,000
15,000	16,000	18,000
16,000	17,000	19,000
17,000	18,000	20,000
18,000	19,000	21,000
19,000	20,000	22,000
20,000	21,000	23,000
21,000	22,000	24,000
20,000	23,000	25,000
23,000	24,000	26,000
24,000	25,000	27,000
25,000	26,000	28,000
26,000	27,000	29,000
27,000	28,000	30,000
28,000	29,000	31,000
29,000	30,000	32,000
30,000	31,000	33,000
31,000	32,000	34,000
32,000	33,000	35,000
33,000	34,000	36,000
34,000	35,000	37,000
35,000	36,000	38,000
36,000	37,000	39,000
37,000	38,000	40,000
38,000	39,000	41,000
39,000	40,000	42,000
40,000	41,000	43,000
41,000	42,000	44,000
42,000	43,000	45,000
43,000	44,000	46,000
44,000	45,000	47,000
45,000	46,000	48,000
46,000	47,000	49,000
47,000	48,000	50,000
48,000	49,000	51,000
49,000	50,000	52,000
50,000	51,000	53,000
51,000	52,000	54,000
52,000	53,000	55,000
53,000	54,000	56,000
54,000	55,000	57,000
55,000	56,000	58,000
56,000	57,000	59,000
57,000		60,000

(b) Subject to the conditions and limitations approved by the Office of Personnel Management which are contained in the policy purchased by the Office, the group accidental death and dismemberment insurance provides payment as follows:

*Loss**Amount payable*

For loss of life-----Full amount shown in the schedule in subsection (a) of this section.

Loss of one hand or of one foot or loss of One-half the amount shown in the sight of one eye. schedule in subsection (a) of this section.

Loss of two or more such members-----Full amount shown in the schedule in subsection (a) of this section.

For any one accident the aggregate amount of group accidental death and dismemberment insurance that may be paid may not exceed the amount shown in the schedule in subsection (a) of this section.

(c) The Office shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay and shall specify the types of pay included in annual pay. For the purpose of

this chapter, "annual pay" includes premium pay under section 5545 (c)(1) of this title.

(d) In determining the amount of insurance to which an employee is entitled—

(1) a change in rate of pay under subchapter VI of chapter 53 of this title is deemed effective as of the first day of the pay period after the pay period in which the payroll change is approved; and

(2) a change in rate of pay under section 5344 or 5349 of this title is deemed effective as of the date of issuance of the order granting the increase or the effective date of the increase, whichever is later, except, that in the case of an employee who dies or retires during the period beginning on the effective date of the increase and ending on the date of the issuance of the order granting the increase, a change in rate of pay under either of such sections shall be deemed as having been in effect for such employee during that period.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 593, amended Pub. L. 89-737, § 1(3), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90-206, § 401, Dec. 16, 1967, 81 Stat. 646; Pub. L. 92-392, § 11, Aug. 19, 1972, 86 Stat. 575; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1222 and 1224.)

### § 8705. Death claims; order of precedence; escheat

(a) The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within 1 year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, or if payment to the person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within 2 years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, and neither the Office nor the administrative office established by the company concerned pursuant to section 8709(b) of this title has received notice that such a claim will be made, payment may be made to the claimant who in the judgment of the Office is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within 4 years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the Employees' Life Insurance Fund. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 594, amended Pub. L. 90-83, § 1(91), Sept. 11, 1967, 81 Stat. 219; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, Nov. 2, 1978, 92 Stat. 2481.)

#### § 8706. Termination of insurance

(a) A policy purchased under this chapter shall contain a provision, approved by the Office of Personnel Management, to the effect that insurance of an employee stops on his separation from the service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.

(b) (1) If on the date the insurance would otherwise stop the employee retires on an immediate annuity and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding such date,  
or

(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years, life insurance only may be continued, without cost to the employee, under conditions determined by the Commission.<sup>1</sup>

(2) If on the date the insurance would otherwise stop the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding such date,  
or

(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years, life insurance only may be continued, without cost to the employee, under conditions determined by the Commission,<sup>1</sup> during the period the employee is receiving compensation for work injuries and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(3) The amount of life insurance continued under paragraph (1) or paragraph (2) of this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensa-

<sup>1</sup> Should be "Office."

tion for disease or injury. The Commission <sup>1</sup> shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.

(c) The insurance granted to an employee stops, except for a 31-day extension of life insurance coverage, on the day immediately before his entry on active duty or active duty for training unless the period of duty is covered by military leave with pay. The insurance does not stop during a period of inactive duty training. For the purpose of this subsection, the terms "active duty", "active duty for training", and "inactive duty training" have the meanings given them by section 101 of title 38.

(d) Notwithstanding subsections (a) and (b) of this section, an employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

(e) If the insurance of an employee stops because of separation from the service or suspension without pay, and the separation or suspension is thereafter officially found to have been erroneous, the employee is deemed to have been insured during the period of erroneous separation or suspension. Deductions otherwise required by section 8707 of this chapter shall not be withheld from any backpay awarded for the period of separation or suspension unless death or accidental dismemberment of the employee occurs during such period. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 595, amended Pub. L. 90-83, § 1(92), Sept. 11, 1967, 81 Stat. 219; Pub. L. 92-529, § 1, Oct. 21, 1972, 86 Stat. 1050; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, Nov. 2, 1978, 92 Stat. 2481.)

### **§ 8707. Employee deductions; withholding**

During each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the pay of the employee his share of the cost of the group life insurance and accidental death and dismemberment insurance. The amount withheld shall be at the rate, adjusted to the nearest half-cent, of 66½ percent of the level cost of each \$1,000 of insurance, as determined by the Office. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 595, amended Pub. L. 90-206, § 402, Dec. 16, 1967, 81 Stat. 647; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 8708. Government contributions**

(a) For each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, a sum equal to one-half the amount which is

withheld from the pay of the employee under section 8707 of this title shall be contributed from the appropriation or fund which is used to pay him.

(b) When an employee is paid by the Clerk of the House of Representatives, the Clerk may contribute the sum required by subsection (a) of this section from the contingent fund of the House.

(c) When the employee is an elected official, the sum required by subsection (a) of this section is contributed from an appropriation or fund available for payment of other salaries of the same office or establishment. (Pub. L. 98-554, Sept. 6, 1966, 80 Stat. 595, amended Pub. L. 90-206, § 403, Dec. 16, 1967, 81 Stat. 647; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 8709. Insurance policies**

(a) The Office of Personnel Management, without regard to section 5 of title 41, may purchase from one or more life insurance companies a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by this chapter. A company must meet the following requirements:

(1) It must be licensed to transact life and accidental death and dismemberment insurance under the laws of 48 of the States and the District of Columbia.

(2) It must have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

(b) A company issuing a policy under subsection (a) of this section shall establish an administrative office under a name approved by the Office.

(c) The Office at any time may discontinue a policy purchased from a company under subsection (a) of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 596; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 8710. Reinsurance**

(a) The Office of Personnel Management shall arrange with a company issuing a policy under this chapter for the reinsurance, under conditions approved by the Office, of portions of the total amount of insurance under the policy, determined under this section, with other life insurance companies which elect to participate in the reinsurance.

(b) The Office shall determine for and in advance of a policy year which companies are eligible to participate as reinsurers and the amount of insurance under a policy which is to be allocated to the issuing company and to reinsurers. The Office shall make this determination at least every 3 years and when a participating company withdraws.

(c) The Office shall establish a formula under which the amount of insurance retained by an issuing company after ceding reinsurance, and the amount of reinsurance ceded to each reinsurer, is in proportion to the total amount of each company's group life insurance, excluding insurance purchased under this chapter, in force in the United States

on the determination date, which is the most recent December 31 for which information is available to the Office. In determining the proportions, the portion of a company's group life insurance in force on the determination date in excess of \$100,000,000 shall be reduced by—

- (1) 25 percent of the first \$100,000,000 of the excess;
- (2) 50 percent of the second \$100,000,000 of the excess;
- (3) 75 percent of the third \$100,000,000 of the excess; and
- (4) 95 percent of the remaining excess.

However, the amount retained by or ceded to a company may not exceed 25 percent of the amount of the company's total life insurance in force in the United States on the determination date.

(d) A fraternal benefit association which is—

- (1) licensed to transact life insurance under the laws of a State or the District of Columbia; and
- (2) engaged in issuing insurance certificates on the lives of employees of the United States exclusively;

is eligible to act as a reinsuring company and may be allocated an amount of reinsurance equal to 25 percent of its total life insurance in force on employees of the United States on the determination date named by subsection (c) of this section.

(e) An issuing company or reinsurer is entitled, as a minimum, to be allocated an amount of insurance under the policy equal to any reduction from December 31, 1953, to the determination date, in the amount of the company's group life insurance under policies issued to associations of employees of the United States. However, any increase under this subsection in the amount allocated is reduced by the amount in force on the determination date of any policy covering life insurance agreements assumed by the Office.

(f) The Office may modify the computations under this section as necessary to carry out the intent of this section. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 596; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8711. Basic tables of premium rates

(a) A policy purchased under this chapter shall include, for the first policy year, basic tables of premium rates as follows:

(1) For group life insurance, a schedule of basic premium rates by age which the Office of Personnel Management determines to be consistent with the lowest schedule of basic premium rates generally charged for new group life insurance policies issued to large employers.

(2) For group accidental death and dismemberment insurance, a basic premium rate which the Office determines is consistent with the lowest rate generally charged for new group accidental death and dismemberment policies issued to large employers.

The schedule for group life insurance, except as otherwise provided by this section, shall be applied to the distribution by age of the amounts of group life insurance under the policy at its date of issuance to determine an average basic premium rate per \$1,000 of life insurance.

(b) The policy shall provide that the basic premium rates determined for the first policy year continue for later policy years except as readjusted for a later year based on experience under the policy.

The company issuing the policy may make the readjustment on a basis that the Office determines in advance of the policy year is consistent with the general practice of life insurance companies under policies of group life and group accidental death and dismemberment insurance issued to large employers.

(c) The policy shall provide that if the Office determines that ascertaining the actual age distribution of the amounts of group life insurance in force at the date of issue of the policy or at the end of the first or any later year of insurance thereunder would not be possible except at a disproportionately high expense, the Office may approve the determination of a tentative average group life premium rate, for the first or any later policy year, instead of using the actual age distribution. The Office, on request by the company issuing the policy, shall redetermine the tentative average premium rate during any policy year, if experience indicates that the assumption made in determining that rate were incorrect for that year.

(d) The policy shall stipulate the maximum expense and risk charges for the first policy year. The Office shall determine these charges on a basis consistent with the general level of charges made by life insurance companies under policies of group life and accidental death dismemberment insurance issued to large employers. The maximum charges continue from year to year, except that the Office may redetermine them for any year either by agreement with the company issuing the policy or on written notice given to the company at least 1 year before the beginning of the year for which the redetermined maximum charges will be effective. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 597; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### **§ 8712. Annual accounting; special contingency reserve**

A policy purchased under this chapter shall provide for an accounting to the Office of Personnel Management not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the Office—

- (1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;
- (2) the total of all mortality and other claim charges incurred for that period; and
- (3) the amounts of the insurers' expense and risk charges for that period.

An excess of the total of paragraph (1) of this section over the sum of paragraphs (2) and (3) of this section shall be held by the company issuing the policy as a special contingency reserve to be used by the company only for charges under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the company and approved by the Office as being consistent with the rate generally used by the company for similar funds held under other group life insurance policies. When the Office determined that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges under the policy, any further excess shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance

Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the Treasury to the credit of the Fund. The company may make the deposit in equal monthly installments over a period of not more than 2 years. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 598; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8713. Advisory committee

- (a) Repealed. Pub. L. 90-83, § 1(93)(B), Sept. 11, 1967, 81 Stat. 219.
- (b) The Director of the Office of Personnel Management shall appoint a committee composed of five employees insured under this chapter, who serve without additional pay, to advise the Office regarding matters of concern to employees under this chapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 598, amended Pub. L. 90-83, § 1(93), Sept. 11, 1967, 81 Stat. 219; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8714. Employee's Life Insurance Fund

(a) The amounts withheld from employees under section 8707 of this title and the sums contributed from appropriations and funds under section 8708 of this title shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. The Fund is available without fiscal year limitation for—

- (1) premium payments under an insurance policy purchased under this chapter; and
  - (2) expenses incurred by the Office of Personnel Management in the administration of this chapter within the limitations that may be specified annually by appropriation acts.
- (b) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations, and the income derived from dividend or premium rate adjustments from insurers, become a part of the Fund. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 598; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8714a. Optional insurance

(a) Under the conditions, directives, and terms specified in sections 8709-8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each insured employee equal amounts of optional life insurance and accidental death and dismemberment insurance in addition to the amounts provided in section 8704(a) of this title.

(b) The optional life insurance and accidental death and dismemberment insurance shall be made available to each insured employee under such conditions as the Office shall prescribe and in amounts approved by the Office but not more than the greater of \$10,000 or an amount which, when added to the amount provided in section 8704(a) of this title, makes the sum of his insurance equal to his annual pay.

(c) (1) The optional insurance on an employee stops on his separation from service, 12 months after discontinuance of his pay, or on his entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title.

(2) (A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date of such retirement, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years, the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Commission.<sup>1</sup>

(B) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years, the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Commission,<sup>1</sup> during the period the employee is receiving such compensation for disease or injury and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be subject to the same monthly reductions as required for regular life insurance under section 8706(b)(3) of this title.

(d) During each period in which an employee has the optional insurance the full cost thereof shall be withheld from his pay. During each period in which an employee continues optional life insurance after retirement or while in receipt of compensation for work injuries as provided in section 8706(b) of this title, the full cost thereof shall be withheld from his annuity or compensation, except that, at the end of the calendar month in which he becomes 65 years of age, the optional life insurance shall be without cost to him. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for separately from amounts withheld and contributed under sections 8707 and 8708 of this title.

(e) The cost of the optional insurance shall be determined from time to time by the Office on the basis of such age groups as it considers appropriate.

(f) The amount of optional life, or life and accidental death, insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title. (Added Pub. L. 90-206, § 404(1), Dec. 16, 1967, 81 Stat. 647; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, Nov. 2, 1978, 92 Stat. 2481 and 2482.)

#### § 8715. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the Court of Claims, of a civil action or claim against the United States founded on this chapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 599.)

<sup>1</sup> Should be "Office."

**§ 8716. Regulations**

(a) The Office of Personnel Management may prescribe regulations necessary to carry out the purposes of this chapter.

(b) The regulations of the Office may prescribe the time at which and the conditions under which an employee is eligible for coverage under this chapter. The Office, after consulting the head of the agency or other employing authority concerned, may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal, intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years; or

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(c) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8701(a)(8) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 599; amended Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224 and 1227.)

## CHAPTER 89—HEALTH INSURANCE

### SEC.

- 8901. Definitions.
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### § 8901. Definitions

For the purpose of this chapter—

- (1) “employee” means—
  - (A) an employee as defined by section 2105 of this title;
  - (B) a Member of Congress as defined by section 2106 of this title;
  - (C) a Congressional employee as defined by section 2107 of this title;
  - (D) the President;
  - (E) an individual employed by the government of the District of Columbia;
  - (F) an individuals employed by Gallaudet College;
  - (G) a United States Commissioner to whom subchapter III of chapter 83 of this title applies by operation of section 8331(1)(E) of this title; and
  - (H) an individual employed by a county committee established under section 590h(b) of title 16;
- but does not include—
  - (i) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;
  - (ii) an employee who is not a citizen or national of the United States and whose permanent duty station is outside the United States and the Panama Canal Zone;
  - (iii) an employee of the Tennessee Valley Authority; or
  - (iv) an employee excluded by regulation of the Office of Personnel Management under section 8913(b) of this title;
- (2) “Government” means the Government of the United States and the government of the District of Columbia;
- (3) “annuitant” means—
  - (A) an employee who retires on an immediate annuity under subchapter III of chapter 83 of this title or another

retirement system for employees of the Government, after 5 or more years of service or for disability;

(B) a member of a family who receives an immediate annuity as the survivor of an employee or of a retired employee described by subparagraph (A) of this paragraph;

(C) an employee who receives monthly compensation under subchapter I of chapter 81 of this title and who is determined by the Secretary of Labor to be unable to return to duty; and

(D) a member of a family who receives monthly compensation under subchapter I of chapter 81 of this title as the surviving beneficiary of—

(i) an employee who dies as a result of injury or illness compensable under that subchapter; or

(ii) a former employee who is separated after having completed 5 or more years of service and who dies while receiving monthly compensation under that subchapter and who has been held by the Secretary to have been unable to return to duty;

(4) "service", as used by paragraph (3) of this section, means service which is creditable under subchapter III of chapter 83 of this title;

(5) "member of family" means the spouse of an employee or annuitant and an unmarried child under 22 years of age, including—

(A) an adopted child; and

(B) a stepchild, foster child, or recognized natural child who lives with the employee or annuitant in a regular parent-child relationship;

or such an unmarried child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 22;

(6) "health benefits plan" means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services;

(7) "carrier" means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(8) "employee organization" means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter and which, after December 31, 1978, and before January 1, 1980,

applied to the Office for approval of a plan provided under section 8903(3) of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 600, amended Pub. L. 90-83, § 1(95), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91-418, §§ 2, 3(b), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93-160, Nov. 27, 1973, 87 Stat. 635; Pub. L. 95-368, § 2, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95-583, Nov. 2, 1978, 92 Stat. 2482.)

### § 8902. Contracting authority

(a) The Office of Personnel Management may contract with qualified carriers offering plans described by section 8903 of this title, without regard to section 5 of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

(b) To be eligible as a carrier for the plan described by section 8903 (2) of this title, a company must be licensed to issue group health insurance in all the States and the District of Columbia.

(c) A contract for a plan described by section 8903 (1) or (2) of this title shall require the carrier—

(1) to reinsure with other companies which elect to participate, under an equitable formula based on the total amount of their group health insurance benefit payments in the United States during the latest year for which the information is available, to be determined by the carrier and approved by the Office; or

(2) to allocate its rights and obligations under the contract among its affiliates which elect to participate, under an equitable formula to be determined by the carrier and the affiliates and approved by the Office.

(d) Each contract under this chapter shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the Office considers necessary or desirable.

(e) The Office may prescribe reasonable minimum standards for health benefits plans described by section 8903 of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Office may terminate the contract of a carrier effective at the end of the contract term, if the Office finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

(f) A contract may not be made or a plan approved which excludes an individual because of race, sex, health status, or, at the time of the first opportunity to enroll, because of age.

(g) A contract may not be made or a plan approved which does not offer to each employee or annuitant whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee or annuitant who exercises this option shall pay the full periodic charges of the nongroup contract.

(h) The benefits and coverage made available under subsection (g) of this section are noncancelable by the carrier except for fraud, overinsurance, or nonpayment of periodic charges.

(i) Rates charged under health benefits plans described by section 8903 of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903 (1) and (2) of this title shall be determined on a basis which, in the judgment of the Office, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, the judgment of the Office, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) Each contract under this chapter, shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, or family member is entitled thereto under the terms of the contract.

(k) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist or optometrist, licensed or certified as such under Federal or State law, as applicable, an employee, annuitant, or family member covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist or optometrist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. The provisions of this subsection shall not apply to group practice prepayment plans.

(l) The Office shall contract under this chapter for a plan described in section 8903(4) of this title with any qualified health maintenance carrier which offers such a plan. For the purpose of this subsection, "qualified health maintenance carrier" means any qualified carrier which is a qualified health maintenance organization within the meaning of section 1310(d)(1) of title XIII of the Public Health Service Act (42 U.S.C. 300c-9(d)).

(m)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, if a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of health services for the care and treatment of any particular health condition, the carrier shall provide, pay, or reimburse up to the limits of its contract for any such health service properly provided by any person licensed under State law to provide such service if such service is provided to an individual covered by such contract who is a member of a medically

underserved population (within the meaning of section 1302(7) of the Public Health Service Act (42 U.S.C. 300e-17)).

(B) The provisions of subparagraph (A) shall not apply to contracts entered into providing prepayment plans described in section 8903(4) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 601, amended Pub. L. 93-246, § 3, Jan. 31, 1974, 88 Stat. 4; Pub. L. 93-363, § 1, July 30, 1974, 88 Stat. 398; Pub. L. 94-183, § 2(43), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 94-460, Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95-368, § 1, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) **SERVICE BENEFIT PLAN.**—One Government-wide plan, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees or annuitants, or members of their families, or, under certain conditions, payment is made by a carrier to the employee or annuitant or member of his family.

(2) **INDEMNITY BENEFIT PLAN.**—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) **EMPLOYEE ORGANIZATION PLANS.**—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) **COMPREHENSIVE MEDICAL PLANS.**—

(A) **GROUP-PRACTICE PREPAYMENT PLANS.**—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include physicians representing at least three major medical specialties who receive all or a substantial part of their professional income from the prepaid funds.

(B) **INDIVIDUAL-PRACTICE PREPAYMENT PLANS.**—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic pro-

cedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 602; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### § 8904. Types of benefits

The benefits to be provided under plans described by section 8903 of this title may be of the following types:

(1) SERVICE BENEFIT PLAN.—

- (A) Hospital benefits.
- (B) Surgical benefits.
- (C) In-hospital medical benefits.
- (D) Ambulatory patient benefits.
- (E) Supplemental benefits.
- (F) Obstetrical benefits.

(2) INDEMNITY BENEFIT PLAN.—

- (A) Hospital care.
- (B) Surgical care and treatment.
- (C) Medical care and treatment.
- (D) Obstetrical benefits.
- (E) Prescribed drugs, medicines, and prosthetic devices.
- (F) Other medical supplies and services.

(3) EMPLOYEE ORGANIZATION PLANS.—Benefits of the types named under paragraph (1) or (2) of this section or both.

(4) COMPREHENSIVE MEDICAL PLANS.—Benefits of the types named under paragraph (1) or (2) of this section or both.

All plans contracted for under paragraphs (1) and (2) of this section shall include benefits both for costs associated with care in a general hospital and for other health services of a catastrophic nature. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 603.)

#### § 8905. Election of coverage

(a) An employee may enroll in an approved health benefits plan described by section 8903 of this title either as an individual or for self and family.

(b) An annuitant who at the time he becomes an annuitant was enrolled in a health benefits plan under this chapter—

(1) as an employee for a period of not less than—

- (A) the 5 years of service immediately before retirement;
- (B) the full period or periods of service between the last day of the first period, as prescribed by regulations of the Office of Personnel Management, in which he is eligible to enroll in the plan and the date on which he becomes an annuitant; or

- (C) the full period or periods of service beginning with the enrollment which became effective before January 1, 1965, and ending with the date on which he becomes an annuitant;

whichever is shortest; or

(2) as a member of the family of an employee or annuitant; may continue his enrollment under the conditions of eligibility prescribed by regulations of the Office.

(c) If an employee has a spouse who is an employee, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee or annuitant and as a member of the family.

(d) An employee or annuitant enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(e) An employee or annuitant may transfer his enrollment from a health benefits plan described by section 8903 of this title to another plan described by that section at the times and under the conditions prescribed by regulations of the Office. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 603; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

## § 8906. Contributions

(a) The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

- (1) the service benefit plan;
- (2) the indemnity benefit plan;
- (3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and
- (4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.

(b) (1) Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter shall be adjusted, beginning on the first day of the first applicable pay period of each year, to an amount equal to the following percentage, as applicable, of the average subscription charge determined under subsection (a) of this section: 50 percent for applicable pay periods commencing in 1974 and 60 percent for applicable pay periods commencing in 1975 and in each year thereafter.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office).

(c) There shall be withheld from the pay of each enrolled employee and the annuity of each enrolled annuitant and there shall be con-

tributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e) (1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(f) The Government contributions for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Clerk of the House of Representatives, from the contingent fund of the House; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g) The Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(h) The Office shall provide for conversion of biweekly rates of contributions specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 604, amended Pub. L. 90-83, § 1(96), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91-418, § 1(a), Sept.

25, 1970, 84 Stat. 869; Pub. L. 93-246, § 1, Jan. 31, 1974, 88 Stat. 3; Pub. L. 94-310, § 3(a), June 15, 1976, 90 Stat. 687; Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1059; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226 and 1227.)

### § 8907. Information to employees

(a) The Office of Personnel Management shall make available to each employee eligible to enroll in a health benefits plan under this chapter such information, in a form acceptable to the Office after consultation with the carrier, as may be necessary to enable the employee to exercise an informed choice among the types of plans described by section 8903 of this title.

(b) Each employee enrolled in a health benefits plan shall be issued an appropriate document setting forth or summarizing the—

(1) services or benefits, including maximums, limitations, and exclusions, to which the employee or the employee and members of his family are entitled thereunder;

(2) procedure for obtaining benefits; and

(3) principal provisions of the plan affecting the employee or members of his family.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 8908. Coverage of restored employee and survivor annuitants

(a) An employee enrolled in a health benefits plan under this chapter who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unjustified or unwarranted may, at his option, enroll as a new employee or have his coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place.

(b) A surviving spouse whose survivor annuity under this title was terminated because of remarriage and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 of this title if such spouse was covered by any such plan immediately before such annuity was terminated. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605, amended Pub. L. 94-342, § 1, July 6, 1976, 90 Stat. 808; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1226.)

### § 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of employees, annuitants, and the Government described by section 8906 of this title shall be paid into the Fund. The fund is available—

(1) without fiscal year limitation for all payments to approved health benefits plans; and

(2) to pay expenses for administering this chapter within the limitations that may be specified annually by Congress.

(b) Portions of the contributions made by employees, annuitants, and the Government shall be regularly set aside in the Fund as follows:

(1) A percentage, not to exceed 1 percent of all contributions, determined by the Office to be reasonably adequate to pay the

administrative expenses made available by subsection (a) of this section.

(2) For each health benefits plan, a percentage, not to exceed 3 percent of the contributions toward the plan, determined by the Office to be reasonably adequate to provide a contingency reserve.

The Office, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the Office. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived, as the Office from time to time shall determine.

(c) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations become a part of the Fund.

(d) When the assets, liabilities, and membership of employee organizations sponsoring or underwriting plans approved under section 8903(3) of this title are merged, the assets (including contingency reserves) and liabilities of the plans sponsored or underwritten by the merged organizations shall be transferred at the beginning of the contract term next following the date of the merger to the plan sponsored or underwritten by the successor organization. Each employee or annuitant affected by a merger shall be transferred to the plan sponsored or underwritten by the successor organization unless he enrolls in another plan under this chapter.

(e) Except as provided by subsection (d) of this section, when a plan described by section 8903 (3) or (4) of this title is discontinued under this chapter, the contingency reserve of that plan shall be credited to the contingency reserves of the plans continuing under this chapter for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 605; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

#### **§ 8910. Studies, reports, and audits**

(a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefits plans available to employees and on the experience of the plans.

(b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the General Accounting Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.

(c) Each Government agency shall keep such records, make such certifications, and furnish the Office with such information and reports as may be necessary to enable the Office to carry out its functions under this chapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 606; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8911. Advisory committee

The Director of the Office of Personnel Management shall appoint a committee composed of five members, who serve without pay, to advise the Office regarding matters of concern to employees under this chapter. Each member of the committee shall be an employee enrolled under this chapter or an elected official of an employee organization. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; amended Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224.)

### § 8912. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the Court of Claims, of a civil action or claim against the United States founded on this chapter. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607.)

### § 8913. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Office may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described by section 8903 of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointments, seasonal or intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years; or

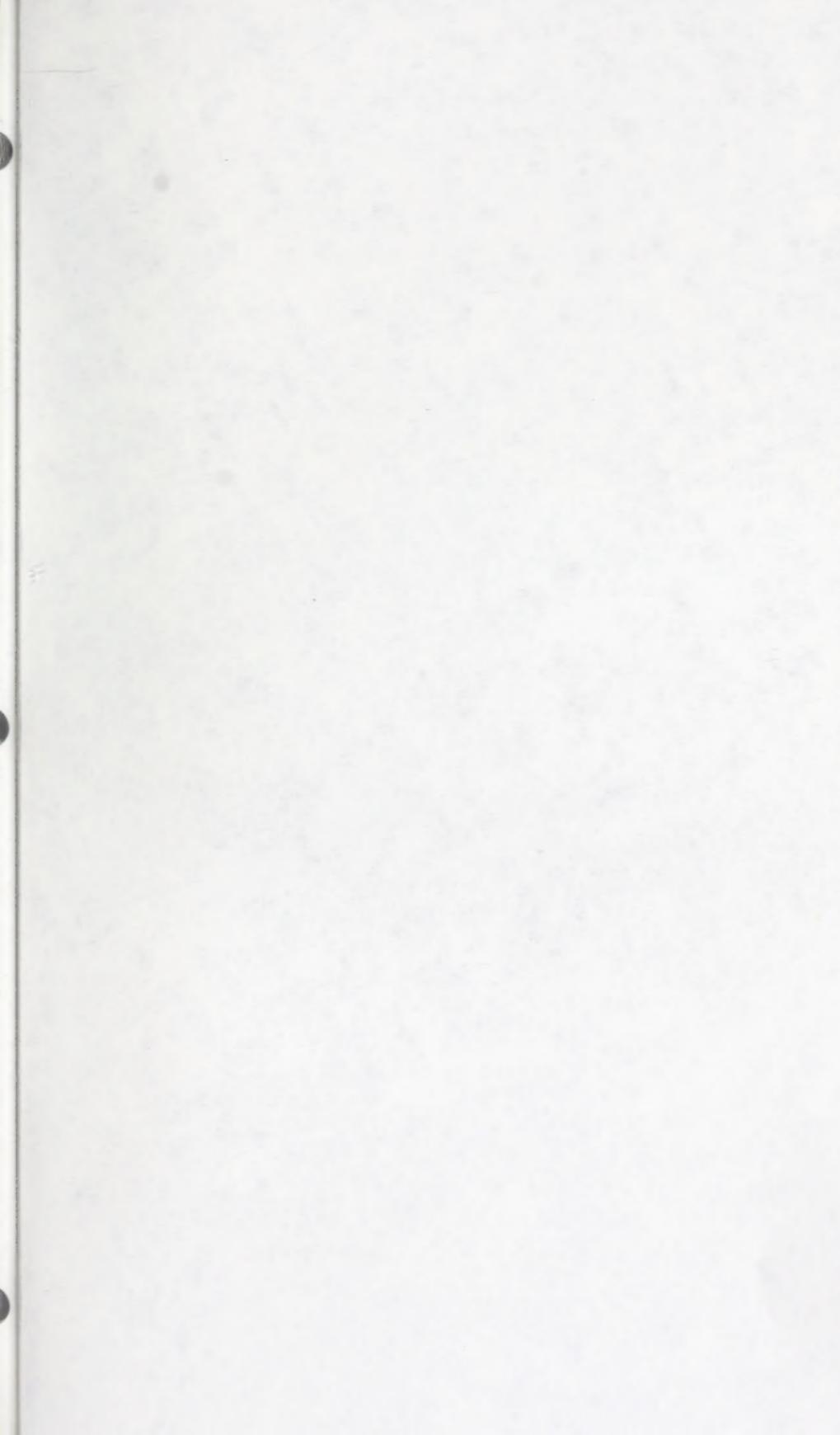
(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees and annuitants and members of their families under health benefit plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an annuitant ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may

permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

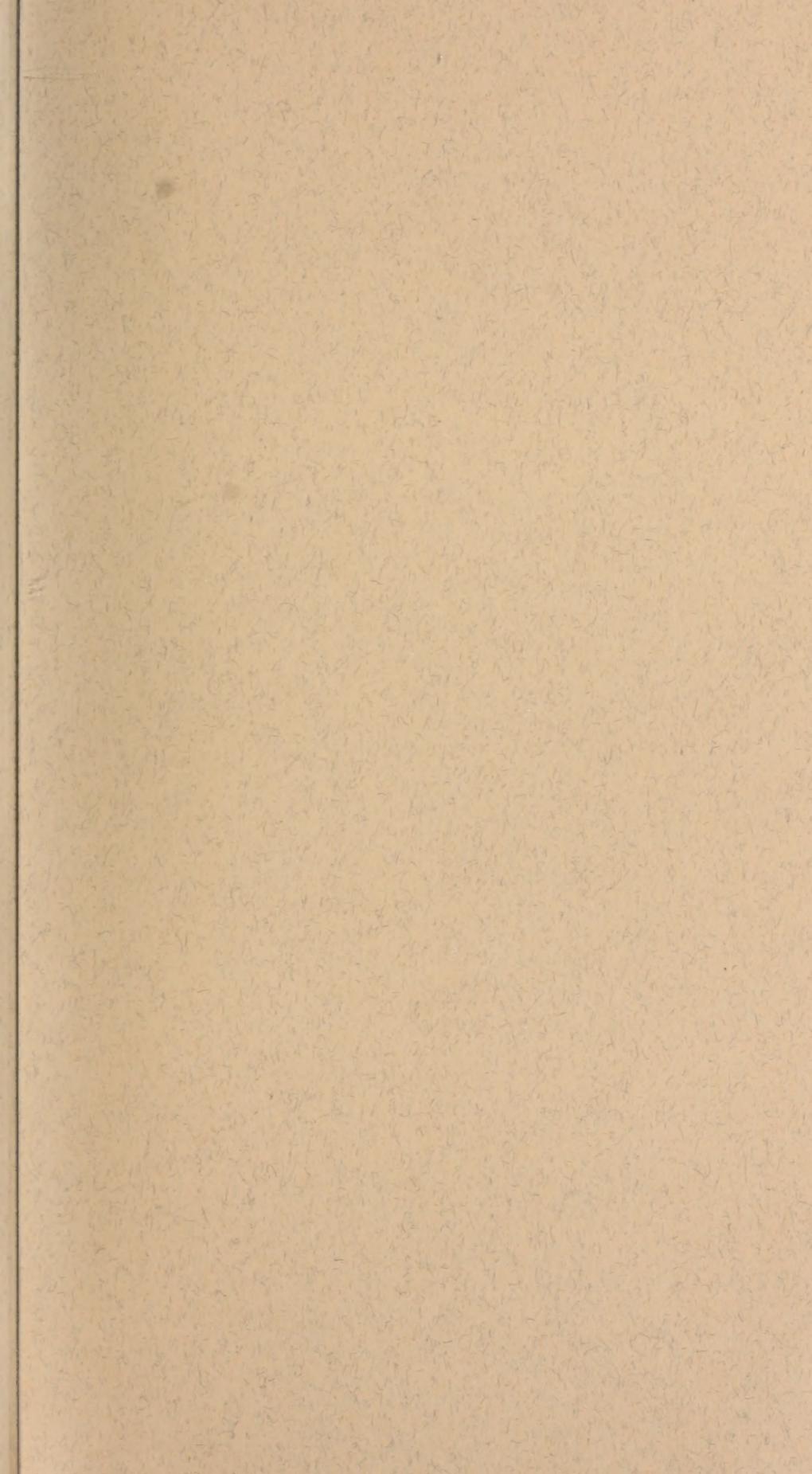
(d) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8901(1)(H) of this title. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 607; amended Pub. L. 95-437, Oct. 10, 1978, 92 Stat. 1059; Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 1224 and 1227.)





provide temporary extension of the coverage of insurance to a family for up to one month.

(d) The Secretary of Agriculture shall prescribe regulations defining the application and practice of the coverage to any family unit in which there is a child under 18 years of age, or any other individual, no older than 26 years old, who made their election to have the same coverage as the child, if either the child or the individual is covered by the insurance.



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